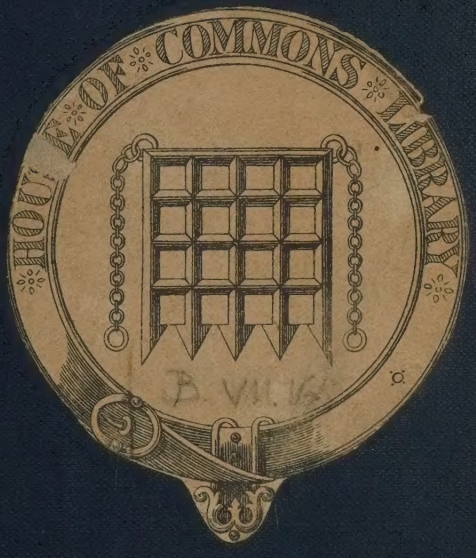
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# Problems of International Practice and Diplomacy

# Problems of International Practice and Diplomacy

## With Special Reference to

## The Hague Conferences and Conventions and other General International Agreements

BY

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MY FRIEND

THE RIGHT HON. SIR JOHN BRUNNER, BART., M.P.

IN ACKNOWLEDGMENT

OF MUCH HELP AND SYMPATHY

# PREFACE

THE form of this volume requires explanation. It has already been privately issued, partly in fragments and partly as a confidential memorandum, for the consideration of my colleagues of the Institute of International Law, different government departments at home and abroad, and others. The wide margins and blanks were left for the insertion of new matter and the convenience of the specialist readers whose views on different points I had solicited. As they may also prove serviceable to the readers of a book of this kind generally, and changing the form would have entailed delay and labour out of proportion to the resulting advantage, I hope I may be pardoned for in this respect not adhering strictly to time-honoured traditions of book-production.

As regards the subject-matter, the purpose of the book is far less pretentious than a cursory glance at the table of contents might lead the reader to suppose. If I have made suggestions, I have done so in all humility, knowing that imperfections in human character, collective emotions and unforeseen emergencies tend to upset the best calculated international appliances. Yet the spirit of law and order does unquestionably progress, not only in the domestic polity of nations, but also in relations between State and State. And the growth of this spirit of law and order as between State and State has largely been due to direct and conscious effort, as will be seen in every chapter of this book.

My object has, therefore, been to single out these cases of direct and conscious effort, and to endeavour to isolate the ethical principles or reasons of expediency which seem to have underlain their application, and to utilise them for the solution of other kindred problems. In this country it is a truism to say that a

judicious enlistment of analogies is the safest of all arguments. Yet to many generous-minded friends this seems like mere tinkering where they would remodel.

I have been favoured with many suggestions and observations by the friends and colleagues to whom I sent the original volume and matter privately issued. A few of them will certainly interest the present readers.

Some friends reproach me with an exaggerated respect for the *status quô*. One distinguished colleague writes me:

"Your observation that 'conflicts arise *chiefly* out of matters of rivalry connected with territorial aggrandisement and expansion' (p. 154), takes no account of all the possessions obtained by violence—by violation—violation by which a people is held in subjugation by another people or by a foreign government, in circumstances which are unendurable. Witness the states of things in Macedonia and Armenia—even Manchuria. . . . Would you consecrate such states of things, such bleeding wounds, such disgraces for humanity and civilisation, by an undertaking among the Powers to 'respect as between and among them the integrity of their respective dominions, possessions, etc.'? . . . Such a clause presupposes exclusively legitimate 'possessions.' Your proposal would hand over numerous peoples to their oppressors; and this would not be progress, but retrogression."

Another asks me in reference to the same subject:

"Do you intend Turkey to be a party to it? If she is excluded, that exclusion would be like a call to war. If she is included, Art. I. (p. 154) would guarantee her the continuance of her fiendish misrule."

There is much truth in these observations. At the same time, the suggestion that the Powers agree to respect the territorial *status quô* for ten years is not a consecration of misrule in perpetuity, and I think my two distinguished friends have not considered that concerted action for the preservation of peace among the Powers might strengthen their joint influence, possibly facilitate joint action in dealing with the difficulties which are smouldering in the near East, and avert a danger to the peace of Europe.

Several of my correspondents express doubts as to the expediency of adopting any kind of Arbitration Treaty which would include "vital interests" or "national honour," on the ground that such questions are not of a character which can be decided by judicial methods. Yet several questions involving national

honour and vital interests in a supreme degree have, in fact, been decided by arbitration. The Alabama case, the Venezuelan boundary question, the Alaskan fur-seal difficulty, the Alaskan boundary question, all involved either one or the other. It is true that these were matters confined to nations of the same racial origin. But is there reason to suppose that as between Great Britain and France any difficulty involving "national honour" or a "vital interest" would not now be solved by amicable methods? And has not the solution of the difficulty between Sweden and Norway shown how Scandinavian democracies view armed struggles even on vital questions? And have not Chile and Argentina at another extremity of the globe shown the same repulsion for armed conflicts on all difficulties without exception? These communities have not excluded "vital interests" or "national honour" from the scope of their treaties of arbitration.

It is possible that the second Hague Conference will confine itself to the adoption of a general obligatory Convention based on the Anglo-French model, or on the form suggested by the Interparliamentary Union (see pp. 13 and 148), which would be a decided improvement. My suggestions, however, are not confined to what is attainable at the second Hague Conference; and what may not seem feasible as a general measure, might be made the subject of a treaty between specific States, *e.g.* Great Britain and France, who have already been pioneers in giving a limited compulsory jurisdiction to The Hague Court. In particular, a leading authority on the subject writes me:

"I observe that in your project of a treaty to cover cases of "national honour" and "vital interest" you side with the requirement of a stipulated majority for a decision . . . but I have never been disposed to regard it with favour as a permanent plan. I think, however, that your addition of the requirement of an impartial examination of and report upon the opinions of the variant arbitrators is a happy amendment of the plan, and tends to prevent the dead-locking which might otherwise be apprehended."

Another leading authority on the subject writes me:

"I am of opinion that the Great Powers, and especially Germany, would not consent to making arbitration compulsory for all cases. The principal

objection of Germany in 1899 was that, if she accepted compulsory arbitration, she would lose the advantage she has, or thinks she has, in the more speedy mobilisation of her forces. . . . Other Powers possibly have the same idea. . . . I do not share this view, because these Powers could always utilise the same advantages better than their enemy. The objection would be difficult to overcome, though I am strongly in favour of your proposal (see p. 145), and should like to see it admitted in The Hague Convention as a possible form. The fact that it would not bind the Parties to it absolutely and unconditionally may commend it. To my mind it offers two great advantages:—1. the necessary time for national feeling to cool down; 2. even in case of four voting against two, the decision would have such a great moral effect that no Power would like to disregard it."

A constitutional authority belonging to a neutral State calls my attention to a point of interest in connection with "vital interest" and "national honour." He observes:

"We know in . . . that the liberal institutions of a small country are sometimes a matter of distrust to their powerful neighbours:—it must be admitted that the conception of political offences, for instance, that freedom of public meetings, freedom of the press, etc., are vital interests, and that the national honour forbids their being in any way affected."

This very judicious observation has led me to make an alteration in my draft on the subject (see p. 145).

Most of my correspondents are agreed that in the present state of uncertainty of international practice as regards the definition and scope of contraband, and in view of the difficulty of fixing a criterion by which a voyage can be adjudicated with any precision to be "continuous," these subjects in particular should be submitted to an immediate and thorough examination.

On "continuous voyages" one of my colleagues writes:

"Suppose a war pending between France and Germany, and German or French ports blockaded. Vessels carrying cargoes of foodstuffs bound for, say, Antwerp or Rotterdam might be captured on the High Sea on the ground that Germany or France was in great need of them, and that they would necessarily be forwarded to these countries where they would fetch a higher price. . . . It ought surely not to be possible that such a presumption should suffice to justify seizure."

If the doctrine of "continuous voyages" is to be applied at all, the constantly increasing ramifications of transit trade seem to make only attenuations possible, and I am afraid my friend's distinction can only be met by adjustment of the estimated loss

of profit to circumstances. Would not the clause 4 in my draft (p. 169) attenuate the hardship my friend apprehends?

The suggestion in Art. IV. § (*b*) of my tentative form of Convention dealing with the rights and obligations of belligerents and neutrals with a view to restricting belligerent Powers of visit and search seems to commend itself to many, but especially as regards mail-steamers, in regard to which a very distinguished authority writes:

"Arrangements between mail-steamers of a neutral and belligerent, under which loading should take place under the supervision of the belligerent's consul or other agent, and a certificate be given, which, with provision against additional shipment or breaking bulk would ensure the vessel against detention, could, I think, be made."

My proposal as to limiting the area of hostilities (pp. 71 and 156) suggests the following interesting observations to one of my correspondents who has had great practical experience of shipping cases:

"I have serious doubts as to its practicability. Take, for example, the Spanish-American War. The extent of the possible area of hostilities could scarcely be foreseen in the beginning of the war. Moreover, the authorities at the port of loading would scarcely be able to take responsibility for the truth of the required declaration, and great inconvenience might arise to the neutral shippers from want of declarations or from their incorrectness."

I think my eminent friend has overlooked the condition in my draft (p. 157), that the declaration would only be a bar to visit and search outside the area of hostilities as fixed by each belligerent.

Lastly, a fear is expressed by one of my most valued correspondents that British manliness might be undermined by a long period of peace. He has more confidence in the permanent effectiveness of pacific methods than I have! In fact, however, the growth of democratic feeling has in no country tended to deprive it of its power to feel the thrill of indignation, of its will to assert its just rights by material sacrifice, or of its courage to shed its blood for a righteous cause. But there have been wars neither righteous, nor necessary, nor even useful, and democracy may become capable of making distinctions for itself, for unquestionably there are unconscious workings of the public mind which develop its capacity. Everybody, whose business it is or

who chooses to watch its moods and evolution, knows how it is affected by every breath of feeling, as a tree rustles to every breath of wind, and how a furious blast may strain it to snapping. Still the root of human reason gains strength from every gust; and if Western peoples grow more peaceful because more reasonable, this can be no parallel to the historic cases of sybarite or subject peoples emasculated by long periods of non-responsibility.

I have left a certain number of controverted questions untouched, the volume being confined to matters which seem ripe enough to be brought before the second Hague or other International Conferences, or to be otherwise dealt with by diplomacy. Any haste in giving finality to international rights and obligations is obviously still more undesirable than hasty domestic legislation. Moreover, without the approval of popular feeling, and a commencement, so to speak, of ratification by actual practice, any proposals to fix them by contractual methods have a purely theoretical character, however interesting. Hence, though the suggestions I have made are to be regarded rather as possible than as proposed solutions, they have in all cases been more or less tested by application, except, of course, where the object is to enable the reader to see how some suggested reforms work out when formulated with precision.

Mr. Andrew Carnegie has made out a strong case in favour of a "World Council," meeting periodically as a sort of parliament of nations, to deliberate on the common interests of civilised mankind. He has summed up the idea in what he has termed a League of Peace. Sir H. Campbell-Bannerman, in turn, has suggested that it would be a noble task for Great Britain to endeavour to initiate such a League. To talk seriously of a League of Peace is not "mere optimism," as some short-sighted writers, who dub all progress unpractical, have characterised it. Its foundations already exist in the Concert of Europe. The Berlin Conference on West African Affairs, and that of Algeciras on the settlement of Morocco, have gone further, and given effect to the claim of all civilised States to deliberate upon the common economic interests of the civilised world. The Hague Conference was a World Council called

together for the purpose of endeavouring to preserve the peace of the world without any contingent employment of force. The Pan-American Congress, combining the objects of all three, is developing into a permanent Council of the Nations of the American continent. This co-operation among nations for the preservation, on the one hand, of order and law, and, on the other, of goodwill and peace, shows that it is no mere dream to think that the Conferences at The Hague may become periodical, extend the range of their objects, and develop into a World Council.

Young ambitious nations in the buoyant venturesomeness of youth may be tempted to regard the more or less permanent settlement of the affairs of mankind in which the older nations are setting an example as contrary to their interest. Isolation of any nation, however, is not only an economic, but is also a military danger to itself in the presence of possible combinations of nations. Advantages for attack provoke a corresponding counter-development of the forces of resistance. A State which declines to listen to the peaceful overtures of its neighbours, on the ground that it would be quixotic to curtail its disproportionate ability to assail them, necessarily soon finds itself obliged, in the alternative, to increase its strength for the purposes of possible defence. And thus competition in armaments and combinations continues in response to realities of self-preservation which can have no end till this insensate rivalry is checked by an international agreement.[1] If such an agreement is not attainable by reason of any common resulting benefit to all nations alike, might it not form part of some give-and-take adjustment of reasonable requirements confined to those chiefly concerned?

But the permanent success of all these efforts, and those of future Hague Conferences, to assure the peace of the world, is dependent on another work which is essential to their effective realisation, viz. the development of reciprocal good feeling among European peoples. In this work King Edward VII.

[1] Some passages of this Preface are reproduced in my article on "the Second Hague Conference" in the June (1907) *Fortnightly Review*.

has won the gratitude of his people and the affection of the friends throughout Europe he has made for his people. If the example he has so brilliantly and successfully set, becomes as widespread as now seems probable, the future may not be really as thick with gloomy prospects as it at present looks.

I have to thank different Foreign Offices and other Government Departments for much courtesy and assistance in communicating to me information and documents which have not been made public, and many of my colleagues of the Institute of International Law, and others, including Sir J. Brunner, to whom I have dedicated the book, for thoughtful and useful criticism. I may mention General Den Beer Portugael (Holland), Mr. Richard Kleen (Sweden), Mr. Gram (Norway), Sir Walter Phillimore, President-Justice Sieveking (Hamburg), Professors Lammasch (Vienna), Stoerk (Germany), J. Bassett Moore (U.S.A.), Fauchille (France), Westlake, K.C., Wilhelm Kauffmann (Germany), Strisower (Austria), Judge Simeon E. Baldwin (U.S.A.), Errera (Belgium), C. Chesney Hyde (U.S.A.), and Streit (Greece), M. Duplessix (France), Senator Rafael de Labra (Spain), Senator R. F. Seijas (Venezuela). As several of my correspondents have been appointed delegates to the second Hague Conference, and others have asked me to treat their communications as confidential, I have suppressed some names, and not ventured to attach any to the useful comments I have quoted. It is right, to prevent misunderstanding, that I should add that, though I have gratefully mentioned names, it must not be supposed that views of any of my eminent correspondents are in any way reflected in mine.

For a number of interesting documents I am also indebted to the *Herald of Peace*, *Concord*, *La Revue de la Paix*, *die Friedenswarte*, the *Advocate of Peace*, and especially to the London Peace Society's useful collection, edited by Dr. Evans Darby, of materials relating to International Arbitration.

T. B.

13 Old Square, Lincoln's Inn,
*June* 1907.

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# INTRODUCTORY NOTE ON THE WORK OF THE SECOND HAGUE CONFERENCE

THE series of meetings held at The Hague between the 18th May and the 29th July 1899, by plenipotentiaries of the vast majority of the independent States of the world, is called "The Peace Conference." The result of the Conference was the adoption of—

I. A Convention for the pacific settlement of international disputes.

II. A Convention relating to the laws and customs of war by land.

III. A Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of the 22nd August 1864.

IV. And three Declarations on the following matters:

(*a*) Prohibition of the launching of projectiles and explosives from balloons or by other similar new methods.[1]

(*b*) Prohibition of the use of projectiles the only object of which is the diffusion of asphyxiating or deleterious gases.

(*c*) Prohibition of the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope, of which the envelope does not entirely cover the core, or is pierced with incisions.

These Conventions and Declarations formed separate Acts, which the States represented could sign at any time until the 31st December 1899.[2]

The Conference furthermore adopted unanimously the following Resolution:

"The Conference is of opinion that the restriction of military budgets, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind."[3]

The following *Vœu* was also unanimously adopted:

"The Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, expresses the wish that steps may be shortly taken for the assembling of a special Conference[4] having for its object the revision of that Convention."

[1] Adopted for a period of five years only, see p. 249.

[2] See text in full, p. 213 *et seq.*, and dates of ratification, p. 255.

[3] See text of original proposals of Russian Government, pp. 123, 124.

[4] This Conference was held at Geneva in June–July 1906. The revised Convention, composed of 33 Articles, is dated July 6, 1906. See full text, p. 261.

The following *Vœux* were adopted, but not unanimously:

"1. The Conference expresses the wish that the question of the rights and duties of neutrals may be inserted in the programme of a Conference in the near future.

"2. The Conference expresses the wish that the questions with regard to rifles and naval guns, as considered by it, may be studied by the Governments with the object of coming to an agreement respecting the employment of new types and calibres.

"3. The Conference expresses the wish that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets.

"4. The Conference expresses the wish that the proposals which contemplate the declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration.

"5. The Conference expresses the wish that the proposal to settle the question of the bombardment of ports, towns, and villages by naval forces may be referred to a subsequent Conference for consideration." [1]

[1] Compare p. 51.

Great Britain signed and became a party to the three Conventions, but not to all the Declarations, etc.

In the year following that of the Peace Conference, in connection with the seizure of the *Bundesrath*, the question of visit and search of mailships, and the application of the rule as to "continuous voyages," gave rise to some animated correspondence, which wound up with a declaration in the Reichstag on January 19, 1900, by Count von Bülow, in which he stated that

"the German Empire would not withhold its concurrence and support if a prospect were to arise of defining more distinctly than heretofore, in conjunction with other Powers, the lines of an international settlement of the disputed points of maritime law."

A rumour that the Emperor of Germany intended sounding Governments as to a second Conference, in which this question would be the chief question for examination, was not confirmed.

Meanwhile a large number of Treaties of Arbitration were signed, referring to Article 19 of the Peace Convention in the following terms:

"The Government of . . . and the Government of . . . signatories of the Convention for the pacific settlement of International disputes, concluded at The Hague, July 29, 1899,

"Considering that by Article 19 of this Convention, the High Contracting Parties reserved to themselves the conclusion of agreements in view of recourse to arbitration in all cases which they judged capable of submission to it,

"Have authorised," etc.

The first was that between Great Britain and France of October 14, 1903. Among the others are treaties in the same

form between Great Britain and Germany, Italy and Spain, and between France and Italy, and France and Spain, making a reference to The Hague Court obligatory in all matters susceptible of judicial treatment, and excluding, in particular, all matters involving the vital interests or the national honour or independence of either party.

On October 25, 1904, while the Russo-Japanese War was raging, Mr. Adee, Assistant-Secretary of State, on behalf of President Roosevelt, sent despatches to the American Ambassadors and Ministers abroad, instructing them to sound the Governments, to which they were accredited, as to accepting an invitation to a fresh Conference at The Hague for the purpose of "broadening and strengthening the original Convention, and especially of considering means further to attenuate the horrors of modern warfare, and conserve and extend the rights of neutral commerce on the high seas." Invitations were also sent to four South and Central American Republics which had signified "their earnest desire to adhere to The Hague Treaty." The treaty contains no general clause allowing Powers to adhere to its articles upon their own application.

This was shortly afterwards confirmed in a despatch from the Secretary of State (Hon. John Hay) to the United States representatives abroad, of which the following are the chief passages:

"The Peace Conference which assembled at The Hague on May 18, 1899, marked an epoch in the history of nations. Called by His Majesty the Emperor of Russia to discuss the problems of the maintenance of general peace, the regulation of the operations of war, and of the lessening of the burdens which preparedness for eventual war entails upon modern peoples, its labours resulted in the acceptance by the signatory Powers of conventions for the peaceful adjustment of international difficulties by arbitration, and for certain humane amendments to the laws and customs of war by land and sea. A great work was thus accomplished by the Conference, while other phases of the general subject were left to discussion by another Conference in the near future, such as questions affecting the rights and duties of neutrals, the inviolability of private property in naval warfare, and the bombardment of ports, towns, and villages by a naval force. . . .

"The annual conference of the Inter-Parliamentary Union was held this year at St. Louis, in appropriate connection with the World's Fair. Its deliberations were marked by the same noble devotion to the cause of peace and to the welfare of humanity which had inspired its former meetings. By the unanimous vote of delegates, active or retired members of the American Congress and of every Parliament in Europe with two exceptions, the following resolution was adopted:

"'Whereas enlightened public opinion and modern civilisation alike demand that differences between nations should be adjudicated and settled in the same manner as disputes between individuals are adjudicated,—namely, by the arbitrament of Courts in accordance with recognised principles of law,—this conference requests the several Governments of the world to send delegates to an international conference to be held at a time and place to be agreed upon by them for the purpose of considering—(1) The questions for the consideration of which the Conference at The Hague expressed a wish that a future conference be called; (2) the negotiation of arbitration treaties between the nations represented at the conference to be convened; (3) the advisability of establishing an international congress to be convened periodically for the discussion of international questions. And this conference respectfully and cordially requests the President of the United States to invite all the nations to send representatives to such a conference.'

"On September 24 these resolutions were presented to the President by a numerous deputation of the Inter-Parliamentary Union. The President accepted the charge offered to him, feeling it to be most appropriate that the Executive of the nation which had welcomed the Conference to its hospitality should give voice to its impressive utterances in a cause which the American Government and people held dear. He announced that he would at an early day invite the other nations, parties to The Hague Convention, to reassemble with a view to pushing forward toward completion the work already begun at The Hague by considering the questions which the first Conference had left unsettled with the express provision that there should be a second Conference.

"In accepting this trust the President was not unmindful of the fact, so vividly brought home to all the world, that a great war is now in progress. He recalled the circumstance that at the time when, on August 24, 1898, His Majesty the Emperor of Russia sent forth his invitation to the nations to meet in the interests of peace the United States and Spain had merely halted, in their struggle, to devise terms of peace. While at the present moment no armistice between the parties now contending is in sight, the fact of an existing war is no reason why the nations should relax the efforts they have so successfully made hitherto toward the adoption of rules of conduct which may make more remote the chances of future wars between them. In 1899 the Conference of The Hague dealt solely with the larger general problems which confront all nations, and assumed no function of intervention or suggestion in the settlement of the terms of peace between the United States and Spain. It might be the same with a reassembled Conference at the present time. Its efforts would naturally lie in the direction of *further codification of the universal ideas of right and justice which we call international law*; its mission would be to give them future effect. . . .

"It is only by comparison of views that a general accord can be reached as to the matters to be considered by the new Conference. It is desirable that in the formulation of a programme the distinction should be kept clear between the matters which belong to the province of international law and those which are conventional between individual Governments. The final act of The Hague Conference, dated July 29, 1899, kept this distinction clearly in sight. Among the broader general questions affecting the right and justice of the relation of sovereign States which were then relegated to a future Conference, were the rights and duties of neutrals, the inviolability of private property in naval warfare, and the bombardment of ports, towns, and villages by a naval force. The other matters mentioned in the final Act take the form of suggestions for consideration by interested Governments.

"The three points mentioned cover a large field. The first, especially, touching the rights and duties of neutrals, is of universal importance. Its rightful disposition affects the interests and well-being of all the world. The neutral is something more than an onlooker. His acts of omission or commission may have an influence—indirect, but tangible—on a war actually in progress; whilst, on the other hand, he may suffer from the exigencies of the belligerents. It is this phase of warfare which deeply concerns the world at large. Efforts have been made, time and again, to formulate rules of action applicable to its more material aspects, as in the Declarations of Paris. As recently as April 28, the Congress of the United States adopted a resolution reading thus:

"'Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that it is the sense of the Congress of the United States that it is desirable, in the interest of uniformity of action by the maritime States of the world in time of war, that the President endeavour to bring about an understanding among the principal maritime Powers with a view of incorporating into the permanent law of civilised nations the principle of the *exemption of all private property at sea, not contraband of war, from capture or destruction by belligerents*. Approved April 28, 1904.'

"Other matters closely affecting the rights of neutrals are the distinction to be made between *absolute and conditional contraband of war*, and the *inviolability of the official and private correspondence of neutrals*. As for the duties of neutrals towards the belligerent, the field is scarcely less broad. One aspect deserves mention, from the prominence it has acquired during recent times—namely, the *treatment due to refugee belligerent ships in neutral*

*ports*. It may also be desirable to consider and adopt a procedure by which States non-signatory to the original Act of The Hague Conference may become adhering parties.

"You will explain to his Excellency the Minister for Foreign Affairs that the present overture for a second Conference to complete the postponed work of the first Conference is not designed to supersede other calls for the consideration of special topics, such as the proposition of the Government of the Netherlands, recently issued, to assemble for the purpose of amending the provisions of the existing Hague Convention with respect to *hospital ships*.[1] Like all tentative Conventions, that one is open to change in the light of practical experience, and the fullest deliberation is desirable to that end.

"Finally, you will state the President's desire and hope that the undying memories which cling around The Hague as the cradle of the beneficent work which had its beginning in 1899, may be strengthened by holding the second peace Conference in that historic city.

[1] See p. 198, and text of new Convention, p. 257.

All the Powers accepted the invitation. The Russian Government, however, stipulated that the Conference should not be called till after the termination of the war.

Later on the Russian Emperor made known his desire to be allowed to call the second Conference as he did the first. President Roosevelt at once consented to stand aside. The calling of the Conference, therefore, rested with the Russian Emperor.

President Roosevelt, in his message to Congress of December 5, 1905, returned to the subject. As regards the arrest of the growth of armaments and the diminution of military and naval expenditure, he denounced the "demagogues of peace" "who advocate peace at any price." He hoped "the Conference may be able to devise some way to make arbitration the customary way of settling disputes in all save a few classes of cases which should themselves be as sharply defined and rigidly limited as the present governmental and social development of the world will permit." "Neutral rights and property should be protected at sea as they are protected on land." There should be an "agreement defining contraband of war." The creation of something like "*an organisation of the civilised nations*" should be aimed at. "As the world becomes more highly organised, the need for armies and navies will diminish," but "disarmament can never be of prime importance," there being "more need to get rid of the causes of war than of the implements of war."

On the 21st of December 1905 the British Prime Minister, Sir H. Campbell-Bannerman, in his Albert Hall speech, following more or less on the same lines, defined the Liberal policy towards peace in the following terms:

"I rejoice that . . . the principle of arbitration has made great strides, and that to-day it is no longer counted weakness for any of the Great Powers of the world to submit those issues which would once have been referred to the arbitrament of self-assertion and of passion to a higher tribunal. . . . I hold that the growth of armaments is a great danger to the peace of the world. A policy of huge armaments keeps alive and stimulates and feeds the belief that force is the best, if not the only, solution of international differences. It is a policy which tends to inflame old sores and to create new

sores. And I submit to you that as the principle of peaceful arbitration gains ground, it becomes one of the highest tasks of a statesman to adjust those armaments to the newer and happier condition of things. What nobler rôle could this great country assume than at the fitting moment to place itself at the head of a league of peace, through whose instrumentality this great work would be effected?"—(*Times*, *December* 22, 1905.)

In March–April 1906 the Emperor of Russia issued an official invitation to hold the second Conference in July 1906. Representations from the United States and elsewhere led to the postponement of the Conference till 1907. The chief passages of the letter of invitation were as follows:

"In taking the initiative in convoking a second Peace Conference, the Imperial Government has had in view the necessity of giving a fresh development to the humanitarian principles which served as a basis for the work of the great international meeting of 1899.

"It believed at the same time that it would be opportune to increase, as far as possible, the number of States participating in the work of the projected Conference; and the enthusiasm with which this appeal has been met testifies to the depth and universality of the sentiment of solidarity which makes for the application of ideas having as their object the good of humanity as a whole.

"The first Conference separated with the conviction that its work should be completed subsequently through the regular progress of enlightenment among peoples and in accordance with the dictates of experience. Its most important creation, the International Court of Arbitration, is an institution which has already been put to the test, and has brought together in an Areopagus for the benefit of humanity, jurists who enjoy universal respect. It is also evident how beneficent International Commissions of Inquiry have been in the solution of difficulties between States.

"None the less, there is still a need of improvement in the Convention concerning the Pacific Regulation of International Disputes. As a result of recent arbitrations, the jurists sitting as an International Court have raised certain questions of detail which must be decided so as to give the said Convention its necessary development. It has seemed especially desirable that fixed principles should be laid down regarding the *languages*[1] to be used in the procedure of the Court, in view of the difficulties which might arise in the future, as the number of applications to the Court of Arbitration increased. There is also need of certain improvements in the working of the International Commissions of Inquiry.

[1] See pp. 21, 27–28.

"Touching the regulation of the Laws and Practices of Land Warfare, the arrangements made by the first Conference need no less to be completed and defined in such a way as to prevent any misunderstanding.

"As regards Naval Warfare, of which the laws and usages differ in certain points in different countries, it is necessary to establish fixed regulations in harmony with the requirements of the rights of belligerents and the interests of neutrals.

"An agreement touching these matters should be drawn up, and would form one of the most notable parts of the work of the coming Conference.

"The Imperial Government, believing that it is necessary only to examine questions which press with particular urgency inasmuch as they arise from the experience of recent years, and without touching on those which belong to the *limitation of Military and Naval Forces*, proposes therefore as programme for the Conference the following principal points:

"1. Improvements to be made in the regulations of the Convention touching the pacific settlement of international disputes regarding both the *Court of Arbitration* and the *International Commissions of Inquiry*.

"2. Additions to be made in the regulations of the Convention of 1899 touching the *Laws and Practices of Land Warfare*, among others the opening of hostilities, the rights of neutrals on land, etc. Declarations of 1899, one among them being renewable—the question of its renewal.

"3. Elaboration of a Convention touching the Laws and Practices of Naval Warfare concerning—

"The special operations of naval warfare, such as the *bombardment of ports, towns, and villages* by a naval force, the laying of *mines*, etc.

"The transformation of commercial vessels into warships.

"The *private property of belligerents at sea.*

"The delay to be accorded to commercial vessels in leaving *neutral ports* or those of the enemy after the outbreak of hostilities.

"The rights and duties of *neutrals at sea*, among other questions that of *contraband*, the treatment to which the ships of belligerents should be subjected in neutral ports, *destruction by force majeure of neutral ships* of commerce as prizes.

"In the said Convention should be introduced arrangements relative to land warfare, which should be equally applicable to naval warfare.

"Additions to be made in the Convention of 1899 for the adaptation to naval warfare of the principles of the Geneva Convention of 1864.

"As at the Conference of 1899, it should be understood that the deliberations of the proposed Conference shall deal neither with the political relations among States, nor with the order of things established by treaties, nor with any general interests which were not directly included in the programme adopted by the Cabinets.

"The Imperial Government desires to emphasise that the issue of this programme, and its eventual acceptance by the various States, must not be held to prejudice any opinion which might be formulated in the Conference regarding the solutions to be given to the questions submitted for discussion. Equally, it should belong to the projected Conference to determine the order of questions for discussion and the form to be given to its decisions, according as it may be considered preferable to include certain of them in new conventions, or to add them as supplements to existing conventions.

"In formulating the above programme the Imperial Government has taken into account, as far as possible, the desires expressed by the first Peace Conference, notably in regard to the rights and duties of neutrals, private property of belligerents at sea, the bombardment of ports, towns, etc. It expresses the hope that the —— Government will see in the points proposed, taken as a whole, an expression of the desire to approach that lofty ideal of International Justice which is the constant goal of the entire civilised world."[1]

The chief cause of adjournment of the Conference was the meeting of the Pan-American Congress at Rio-de-Janeiro fixed already for the month of July,—a Congress with which most of the North and South-American experts available for The Hague Conference would be occupied. It was decided at this Congress to add to the questions for discussion at The Hague Conference that of the enforcing by arms of commercial and financial obligations.[2]

Apart from these official statements, a number of societies and private persons[3] have proposed other subjects, and there are many matters in a controversial state which will have sooner or later to be regulated by treaty. Sifting all the different proposals, the matters for consideration may be divided into three classes, namely—

1. Matters which have been handed down officially from the Conference of 1899;
2. Those which have since been proposed by Governments; and
3. Controversial matters of international law and diplomacy which may be discussed with a view to their being settled by international agreement.

The question of the reduction of military and naval budgets and armaments, it is seen, has not been placed in the van of the

[1] The following is, according to the Vienna *Neue Freie Presse*, the text of the circular despatch addressed on April 3rd, 1907, by M. Isvolsky, Russian Minister of Foreign Affairs, to the Russian representatives abroad:—

"Before the summoning of the second Peace Conference, the Imperial Government considers it its duty to lay the present situation before the Powers who have accepted its invitation. All the Powers to whom the Imperial Government, in April 1906, communicated its outline of the programme for the labours of the new Conference have assented to it. The following observations, however, have been made with reference to this programme:—

"The Government of the United States has reserved the right to submit to the second Conference two supplementary questions, one relating to the reduction or limitation of armies, and the other relating to the securing of an obligation to observe certain limitations in the employment of force for the collection of ordinary public debts arising out of treaties.

"The Spanish Government has expressed the wish to discuss the question of the limitation of armaments, and has reserved to itself the right to treat this question at the next Hague meeting.

"The British Government has communicated the fact that it attaches great importance to the discussion at the Conference of the question of expenditure upon armaments, and it has reserved the right to raise this question. It has also reserved the right to abstain from participating in the discussion of any articles in the Russian programme which, in its opinion, would not lead to useful results.

"Japan is of the opinion that certain questions, not specially enumerated in the programme, might advantageously be taken up among the matters which are to be examined, and has reserved the right to abstain or to withdraw from any discussion which may take a direction or show a tendency which, in its judgment, would not conduce to a useful result.

"The Governments of Bolivia, Denmark, Greece, and the Netherlands have likewise in general reserved the right to submit to the judgment of the Conference other matters which exhibit an analogy with those expressly adduced in the Russian programme.

"The Imperial Government deems it its duty to declare that Russia, on its part, adheres to the programme of April 1906 as the basis for the deliberations of the Conference, and in turn reserves the right to abstain from any discussion which does not appear to it to tend to a practical result.

"Observations analogous to these last have been made by the Governments of Germany and Austria-Hungary, which likewise have reserved the right to abstain from the discussion of any question which does not appear to them to tend to practical results.

"The Imperial Government, while bringing these reservations to the knowledge of the Powers, and expressing the hope that the labours of the second Peace Conference will result in fresh securities for a good understanding among the nations of the civilised world, has at the same time addressed a request to the Government of the Netherlands to summon the Conference for the early part of June."—(Translation given in *Herald of Peace*, May 1907.)

[2] See Chap. XIX.

[3] Whether Mr. Alfred Stead's proposed International Pilgrimage of Peace will have any direct effect in obtaining recognition of the articles of faith he suggests it should advocate (*Review of Reviews*, April, p. 374) or not, such work sets the general public thinking on a subject it can no longer afford to neglect.

subjects for discussion, as it was at the Conference of 1899,[1] either by the Russian Government or by President Roosevelt. The British Government, on the contrary, has steadfastly maintained the necessity of keeping this subject in the front. A serious controversy on the advisability of including it in the programme in fact threatened to disturb the harmony of the Governments at the outset, and caused the British Prime Minister to publish a remarkable statement on the subject in the *Nation* of March 2, 1907, protesting vigorously against the suggestion that the discussion of the subject "would be fraught with danger."[2]

[1] See p. 123.

[2] The text of Sir H. CAMPBELL-BANNERMAN'S statement is as follows :—

"The disposition shown by certain Powers, of whom Great Britain is one, to raise the question of the limitation of armaments at the approaching Hague Conference, has evoked some objections both at home and abroad, on the ground that such action would be ill-timed, inconvenient, and mischievous. I wish to indicate, as briefly as may be, my reasons for holding these objections to be baseless.

"It should be borne in mind that the original Conference at The Hague was convened for the purpose of raising this very question, and in the hope that the Powers might arrive at an understanding calculated to afford some measure of relief from an excessive and ever-increasing burden. The hope was not fulfilled, nor was it to be expected that agreement on so delicate and complex a matter would be reached at the first attempt ; but, on the other hand, I have never heard it suggested that the discussion left behind it any injurious consequences. I submit that it is the business of those who are opposed to the renewal of the attempt, to show that some special and essential change of circumstances has arisen, such as to tender unnecessary, inopportune, or positively mischievous, a course adopted with general approbation in 1898.

"Nothing of the kind has, so far as I know, been attempted, and I doubt if it could be undertaken with any hope of success. It was desirable in 1898 to lighten the burden of armaments ; but that consummation is not less desirable to-day, when the weight of the burden has been enormously increased. In 1898 it was already perceived that the endless multiplication of the engines of war was futile and self-defeating ; and the years that have passed have only served to strengthen and intensify that impression. In regard to the struggle for sea power, it was suspected that no limits could be set to the competition, save by a process of economic exhaustion, since the natural checks imposed on military power by frontiers, and considerations of population, have no counterpart upon the seas ; and again, we find that the suspicion has grown to something like a certainty to-day.

"On the other hand, I am aware of no special circumstances which would make the submission of this question to the Conference a matter of international misgiving. It would surprise me to hear it alleged that the interests of the Powers in any respect impose on them a divergence of standpoint so absolute and irreconcilable that the mere discussion of the limitation of armaments would be fraught with danger. Here, again, it seems to me that we do well to fortify ourselves from recent experience. Since the first Hague Conference was held, the points of disagreement between the Powers have become not more, but less acute ; they are confined to a far smaller field ; the sentiment in favour of peace, so far as can be judged, has become incomparably stronger and more constant ; and the idea of arbitration and the peaceful adjustment of international disputes has attained a practical potency, and a moral authority undreamt of in 1898. These are considerations as to which the least that can be said is that they should be allowed their due weight ; and in face of them, I suggest that only upon one hypothesis can the submission of this grave matter to the Conference be set down as inadmissible : namely, that guarantees of peace, be they what they may, are to be treated as having no practical bearing on the scale and intensity of warlike preparations.

"That would be a lame and impotent conclusion, calculated to undermine the moral position of the Conference, and to stultify its proceedings in the eye of the world. It would amount to a declaration that the common interest of peace, proclaimed for the first time by the community of nations assembled at The Hague, and carried forward since then by successive stages with a rapidity beyond the dreams of the most sanguine, has been confided to the guardianship of the Admiralties and War Offices of the Powers.

"Let me in conclusion say a word as to the part of Great Britain. We have already given earnest of our sincerity by the considerable reductions that have been effected in our naval and military expenditure, as well as by the undertaking that *we are prepared to go further, if we find a similar disposition in other quarters.* Our delegates, therefore, will not go into the Conference empty-handed. It has, however, been suggested that our example will count for nothing, because our preponderant naval position will still remain unimpaired. I do not believe it. The sea power of this country implies no challenge to any single State or group of States. I am persuaded that throughout the world that power is recognised as non-aggressive, and innocent of designs against the independence, the commercial freedom, and the legitimate development of other States, and that it is, therefore, a mistake to imagine that the naval Powers will be disposed to regard our position on the sea as a bar to any proposal for the arrest of armaments, or to *the calling of a temporary truce.* The truth appears to me to lie in the opposite direction. Our known adhesion to those two dominant principles—the independence of nationalities and the freedom of trade—entitles us of itself to claim that if our fleets be invulnerable, they carry with them no menace across the waters of the world, but a message of the most cordial goodwill, based on a belief in the community of interests between the nations."

(The Prime Minister's suggestions are marked in italics.)

# I

# EXTENSION OF THE SCOPE OF ARBITRATION TREATIES AND OF THE JURISDICTION OF THE HAGUE COURT

THE "International Convention for the Pacific Settlement of International Disputes," signed at The Hague on July 29, 1899, provided only for voluntary or optional arbitration. All idea of compulsion, in fact, was specifically excluded throughout the Convention. Thus the signatory Powers undertook, in case of grave disagreement or conflict, before appealing to arms, only "as far as circumstances allow," to have recourse to the good offices or mediation of one or more friendly Powers; and, only "as far as circumstances allow," were the Powers to tender their good offices. Provision was made, "as far as circumstances allow," and where involving "neither national honour nor vital interests," for international commissions of inquiry which were even to have no binding character for the parties, etc.

Under the subsequent Anglo-French Treaty, the contracting States obliged themselves to submit to The Hague Court "differences of a judicial order, or relative to the interpretation of existing treaties," on condition that "neither the vital interests nor the independence or honour of the two contracting States, nor the interests of any State other than the two contracting States, are involved." This formula has been followed in the treaties with other States entered into by Great Britain and France. It is obvious that the enforcing of such a treaty depends entirely upon the consent of both parties, and that either party by raising the contention that the matter at issue is vital or involves national honour, can set it aside. By referring such cases to The Hague Court, however, all the effect intended by those who met at the Conference of 1899 has since been given to its programme.

Though States seem no longer reluctant to resort to The Hague Court, and public opinion has come to view it with in-

creasing favour, and several important cases have already been submitted to it, no progress has been made towards compulsory arbitration as a pacific means of settling questions of vital interest as between any Great Powers.

The new Hague Conference, in dealing with the question of extending the scope of arbitration will have to bear in mind that a Treaty of Arbitration, to completely fulfil its purpose of avoiding any break in the amicable relations between States, must be, at the same time, general, obligatory, and automatic.

It must be general, because its purpose may be defeated if, when the crisis comes, one or the other party can dispute the applicability of the treaty to the matter at issue.

It must be obligatory, because if it is not, a treaty of submission must be negotiated at the worst possible moment for negotiations, namely, at a moment when the state of national feeling may threaten to suspend negotiations altogether.

For the same reason it must be automatic.

In short, the operation of the treaty, if it is to serve the cause of peace in times of great emergency, must be instantaneous. The jurisdiction which has failed must *ipso facto* be succeeded by the new jurisdiction, with its new men and its new methods.

Different systems have been adopted by several secondary States for the reference of *all* difficulties without distinction to arbitration. The one, as in the Chili-Argentine Treaty of May 28, 1902, refers them to a specified independent Government

(in the case of the Chili-Argentine Treaty, to the British Government, and in default of the British to the Swiss Government). In the unratified treaty of July 25, 1898, between Italy and the Argentina, it was provided that the arbitral tribunal should be composed of three judges, two appointed by the parties and an umpire chosen by the two judges so appointed; in case of disagreement, the umpire to be appointed by an independent State; in case of disagreement as to the State, to be appointed by the President of the Swiss Confederation, and in his default by the King of Sweden: arbitrators not to be citizens of either contracting party, nor residents on the territory of either party.

The system adopted in the unratified treaty of Jan. 11, 1897, between Great Britain and the United States, also covered all cases of difficulty between the parties, but in other respects rested on totally different principles. There were to be three classes of arbitration tribunals. For questions of indemnity up to £100,000 three arbitrators were to be necessary. When more than that sum was in dispute, five arbitrators were to be called in. For territorial or national questions of supreme importance, six arbitrators were made necessary. If the arbitrators found it impossible to form the required majorities, a friendly Power was to be called in to mediate.[1] The chief clauses in the Treaty were Article VI. and Article VII. Article VI. was as follows:—

"*Any controversy which shall involve the determination of territorial claims* shall be submitted to a tribunal composed of six members, three of whom shall be Judges of the British Supreme Court of Judicature, or members of the Judicial Committee of the Privy Council, to be nominated by Her Britannic Majesty, and the other three of whom shall be Judges of the Supreme Court of the United States, or Justices of the Circuit Courts, to be nominated by the President of the United States, whose award by a majority of not less than five to one shall be final. In case of an award made by less than the prescribed majority, *the award shall also be final, unless either Power shall, within three months after the award has been reported, protest* that the same is erroneous, in which case the award shall be of no validity. In the event of an award made by less than the prescribed majority and protested as above provided, or if the members of the Arbitral Tribunal shall be equally divided, there shall be no recourse to hostile measures of any description until the *mediation* of one or more friendly Powers has been invited by one or both of the high contracting parties."

Article VII. provided for decision by a tribunal, similarly composed, of "*all questions of principle of grave general importance affecting the national rights* of either State, as distinguished from the private rights whereof it is merely the international representative."

[1] These provisions were based on the following "HEADS OF A TREATY FOR ARBITRATION IN CERTAIN CASES," drawn up by Lord SALISBURY and enclosed in a communication from him to Sir JULIAN PAUNCEFOTE, dated *March* 5, 1896:—

"1. Her Britannic Majesty and the President of the United States shall each appoint two or more permanent judicial officers for the purposes of this treaty; and on the appearance of any difference between the two Powers which, in the judgment of either of them, can not be settled by negotiation, each of them shall designate one of the said officers as arbitrator; and the two arbitrators shall hear and determine any matter referred to them in accordance with this treaty.

"2. Before entering on such arbitration the arbitrators shall select an umpire, by whom any question upon which they disagree, whether interlocutory or final, shall be decided. The decision of such an umpire upon any interlocutory question shall be binding upon the arbitrators. The determination of the arbitrators, or, if they disagree, the decision of the umpire, shall be the award upon the matters referred.

"3. Complaints made by the nationals of one Power against the officers of the other; all pecuniary claims or groups of claims amounting to not more than £100,000 made on either Power by the nationals of the other, whether based on an alleged right by treaty or agreement or otherwise; all claims for damages or indemnity under the said amount; all questions affecting diplomatic or Consular privileges; all alleged rights of fishery, access, navigation, or commercial privilege, and all questions referred by special agreement between the two parties, shall be referred to arbitration in accordance with this treaty, and the award thereon shall be final.

"4. Any difference in respect to a question of fact, or of international law, involving the territory, territorial rights, sovereignty, or jurisdiction of either Power, or any pecuniary claim or group of claims of any kind, involving a sum larger than £100,000, shall be referred to arbitration under this treaty. But in any such case, within three months after the award has been reported, if either Power protests that such award is erroneous in respect to some issue of fact, or some issue of international law, the award shall be reviewed by a court composed of three of the judges of the Supreme Court of Great Britain and three of the judges of the Supreme Court of the United States; and if the said court shall determine, after hearing the case, by a majority of not less than five to one, that the said issue has been rightly determined, the award shall stand and be final; but in default of such determination it shall not be valid. If no protest is entered by either Power against the award within the time limited, it shall be final.

"5. Any difference which, in the judgment of either Power, materially affects its honour or the integrity of its territory, shall not be referred to arbitration under this treaty except by special agreement.

"6. Any difference whatever, by agreement between the Powers, may be referred for decision by arbitration, as herein provided, with stipulation that, unless accepted by both Powers, the decision shall not be valid.

"7. The time and place of their meeting, and all arrangements for the hearing, and all questions of procedure, shall be decided by the arbitrators or by the umpire, if need be."

See Lord Alverstone, who, as then legal adviser of the Crown, was connected with the drafting of the scheme, on Lord Salisbury's warm support of the Anglo-American treaty. —(Report of International Law Association, Glasgow Meeting, 1901.)

The essential point in this project was that for questions of supreme national importance the arbitrators were to belong exclusively to the two contracting States. The idea which had until then prevailed in the constituting of Courts of Arbitration was that the arbitrator, or umpire if more than one, had necessarily to be a person who, by his independence and entire detachment from the interests involved, had the requisite impartiality for the pure and simple application of principles of justice. It was thought that nations could only apply as between themselves the same principles as they adopt for litigation between citizens.

It may be said that the word "arbitration," in connection with these provisions, is to some extent a misnomer. The Treaty is called a Treaty of Arbitration, and the Tribunal provided for in Art. VI. is called an "Arbitral Tribunal." There is not, however, much difference between such a Tribunal and a Joint Commission. Be that as it may, it was instituted to meet the difficulty of bringing grave national issues within the operation of an Arbitration Treaty. It was felt that such issues could not be committed to the decision of foreign arbitrators, or of a foreign umpire. The negotiators of the Treaty, therefore, provided that there should be neither outside arbitrators nor any umpire at all. Furthermore, to allay fears that any great national interest might be exposed to quixotic or unpractical views taken by any single judge, it was provided that, to be binding, the decision should require the concurrence against it of two out of three of the judges of either party.[1] This precluded, by a simple and practical method, for both countries, any danger of decisions being arrived at which might shake the confidence of national opinion. The object of the two Governments was manifestly to provide a further stage of negotiation, and thus enable Governments to issue from any deadlock into which they might have drifted in the heat of controversy or under pressure of public feeling. In other words, the negotiators endeavoured to avoid the alleged shortcomings of arbitration, properly so called, and to take advantage of the fact that Joint Commissions have almost invariably been successful in settling the matters referred to them.

[1] In the Alaskan Jboundary case, the Commission was composed of three British and three American commissioners, the decision of a bare majority of whom was to be final.

It cannot be denied that the provisions in question are based on a reasonable view of the difficulties which beset arbitration

in the minds of statesmen, where national questions of vital importance are involved. It embodies, as President Cleveland said of it, a "practical working plan" for bringing delicate matters within a general Treaty. On the other hand, The Hague Convention has dealt with all matters but this very class, which was excluded from the purview of the Conference, and, as regards all others but this class, reference to The Hague Court is fast being made compulsory. Then all that seems needful to complete the work done at The Hague, is to generalise the compulsory clause since adopted by most States for all judicial questions not involving vital interests and national honour, and to graft upon it some such provisions as those contained in the Anglo-American Treaty, that is, confining the choice of arbitrators, where the question is of vital importance or involves the national honour, to persons exclusively of the nationality of the States concerned, the question to be tried, like all other cases, at The Hague Court. This need not, of course, exclude any States from, as some have already done, adopting arbitration in the ordinary sense without any exceptions; and the time may come when all nations will have sufficient confidence in each other to trust the final decision of matters of vital interest to the decision of third parties. Meanwhile the principle of the Anglo-American Treaty of 1897 might be adopted by those States which are disinclined to extend the scope of arbitration properly so called.[1]

[1] See suggested form of treaty, p. 145.

The model Arbitration Treaty, recently adopted by the Interparliamentary Union, is based on an ingenious idea. After excepting from its operation questions affecting *the independence or vital interests or sovereign authority* of the respective States, it sets out a long list of matters, as to which the contracting States agree not to raise the exception. The advantage of this system is that it provides the means of adding to the scope of arbitration without altering the conditions of the agreement. The proposed form is much to be preferred to the existing common (*i.e.* Anglo-French) form. As it does not touch vital questions, it is in no sense an alternative to the form relating to vital interests set out in this volume.[2]

[2] Page 148.

The scope of The Hague Convention was *de facto* extended, in respect of Commissions of Inquiry, by the Anglo-Russian *Declaration* appointing the *North Sea Incident* Commission.

The Declaration enlarged the powers of the Commission beyond those provided by Art. 14 of The Hague Convention, to include the drawing of conclusions from the evidence as to responsibility and the apportionment of blame. This points the way to a further method, which is neither mediation nor inquiry nor arbitration; for if ever national honour seemed likely to complicate the issue, it was in the *North Sea Incident.*

Many cases, such as the North Sea Incident, are conceivable in which it may seem desirable to High Contracting Parties to obtain an opinion by some such method as that of "Commissions on Inquiry" on questions, not exclusively, or even not at all of fact, but partly or wholly of right and law without any binding character for either H.C.P. This would be a further available method of referring an issue, at a critical moment, to a calm examination by competent experts.[1]

[1] See suggested clauses, p. 151.

As regards "vital interests," the Anglo-American term of "grave general importance affecting the national rights" is a little more precise, and therefore seems preferable, but it is worth while to consider whether either term means anything more than "involving the independence or territorial integrity of a State, or treaty obligations already entered into with a Third State."[2]

[2] The first Conference of the American States, embracing all the independent countries of the hemisphere, which assembled in Washington in 1890, framed and recommended the adoption of an arbitration treaty, which contained the stipulation that "the sole question which any nation is at liberty to refuse to arbitrate is a question which may imperil its independence." In closing the deliberations of that Conference, its President, James G. Blaine, who by some has been charged with aggressive statesmanship, referring to this arbitration treaty, said: "We hold up this new Magna Charta which abolishes war, and substitute arbitration between the American republics as the first and great fruit of the International American Conference."—(J. W. Foster, St. Louis Congress of Jurists, 1904, Report, p. 26.)

## NOTE ON "VITAL INTERESTS" AND "NATIONAL HONOUR"

Article X. of the Russian project, submitted as the basis of discussion to the Peace Conference, provided that arbitration should be obligatory in the cases enumerated in it, "in so far as they did not affect the *vital interests* or *national honour* of the contracting States."

Following the same principle, all the Treaties of Arbitration contracted between Great Powers have excluded "Vital Interests" and "National Honour" from their operation.

At first the exclusion of the very matters which seem the only kind capable of inflaming public opinion to a dangerous point, was the subject of some severe criticism. If we look closely into the meaning of a vital interest, we can only find, as typical instances, cases in which the independence of the State itself, its own territorial integrity or a deliberate breach in the established usage of nations of fundamental importance, are involved.

"Vital," of course, means something of such gravity that it cannot be settled by a mere award of damages, such as a State's territorial independence or integrity, its freedom to determine its own mode of government, legislation, and institutions, its power to receive political refugees from other countries, its right to grant absolute freedom of thought, and of its expression even as regards matters beyond its boundaries, etc.

"National Honour" is very like a vital interest, but it generally arises out of the overheated discussion of some question which was originally a judicial one. Every question can become one of national honour in the hands of an unskilled diplomacy; and very often what is called national honour is merely a one-sided view of a question in which honour plays very little part.[1]

[1] "The exception of 'honour' . . . is of very doubtful merit, because questions of so-called national honour are often just the questions which most need to be referred to arbitration, inasmuch as they are those which a nation finds it hardest to recede from when it has once taken up a position, so that the friendly intervention of a third party is especially valuable. . . . The value of arbitration, or of conciliation, by a third party, lies not merely in its providing a means of determining a difficult issue of law or fact, but in its making it easy for the contracting parties to abate their respective pretensions without any loss of dignity."—(James Bryce, quoted by J. W. Foster in his paper at the St. Louis Congress of Jurists, 1904, Report, p. 27.)

On the other hand, it may be contended that it does not much detract from the value of the new treaties that there is a loophole offered by which either nation can escape, in any particular emergency, from their obligations. Treaties between nations cannot be viewed in exactly the same light as contracts between individuals. The best sanction they have is the sense of honour and justice of the contracting parties; and it can be argued, that it will always be better to escape from a treaty through its own provisions than by violating its provisions.

# NOTE ON THE UNRATIFIED ANGLO-AMERICAN TREATY OF ARBITRATION OF DECEMBER 12, 1904, IN CONTRAST WITH THE ANGLO-FRENCH TREATY OF OCTOBER 14, 1903

*N.B.*—Essential points in the two texts are distinguished by italics.

Article XIX. of the Peace Convention of July 29, 1899, is as follows:—"Independently of general or special Treaties, which may already impose the obligation upon the Signatory Powers to have recourse to Arbitration, these Powers reserve to themselves the liberty to conclude either before the ratification of the present Act, or afterwards, new Agreements, general or particular, *with the object of extending compulsory arbitration to all cases which they judge capable of being submitted to it.*"

## Anglo-American Treaty of Dec. 12, 1904.

The United States of America, etc., signatories of the Convention for the Pacific Settlement of International Disputes, concluded at The Hague on the 29th July 1899,

Taking into consideration that by Article XIX. of that Convention the High Contracting Parties have reserved to themselves the right of concluding Agreements with a view to referring to arbitration all questions which they shall consider possible to submit to such treatment,

Have appointed their respective Plenipotentiaries, namely:

Who, after having communicated each to the other their respective full powers in good and due form, have agreed upon the following Articles:

### *Article I.*

Differences which may arise of a legal nature, or relating to the interpretation of Treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th July 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the

## Anglo-French Treaty of Oct. 14, 1903.[1]

The Government of the French Republic and the Government of H.B. Majesty, signatories of the Convention for the Pacific Settlement of International Disputes, concluded at The Hague, July 29th, 1899,

Considering that by Article XIX. of this Convention the High Contracting Parties reserved to themselves the conclusion of Agreements in view of recourse to arbitration in all cases which they judged capable of submission to it,

Have authorised the undersigned to agree as follows:

### *Article I.*

Differences of a judicial order, or relating to the interpretation of existing Treaties between the two Contracting Parties, which may arise, and which it may not have been possible to settle by diplomacy, shall be submitted to the Permanent Court of Arbitration, established by the Convention of July 29th, 1899, at The Hague, on condition, however, that neither the vital interests, nor the independence or honour

1 The French text of Anglo-French Treaty is as follows:—

Le Gouvernement de la République française et le Gouvernement de Sa Majesté britannique, signataires de la Convention pour le règlement pacifique des conflits internationaux, conclue à La Haye, le 29 juillet 1899;

Considérant que, par l'article 19 de cette Convention, les hautes parties contractantes se sont réservé de conclure des accords en vue du recours à l'arbitrage dans tous les cas qu'elles jugeront possible de lui soumettre.

Ont autorisé les soussignés à arrêter les dispositions suivantes:—

Art. 1.—*Les différends d'ordre juridique ou relatifs à l'interprétation des traités existant entre les deux parties contractantes qui viendraient à se produire entre elles et qui n'auraient pu être réglés par la voie diplomatique, seront soumis à la Cour permanente d'arbitrage établie par la convention du 29 juillet 1899 à La Haye, à la condition, toutefois, qu'ils ne mettent en cause ni les intérêts vitaux, ni l'indépendance ou l'honneur des deux Etats contractants et qu'ils ne touchent pas aux intérêts de tierces puissances.*

Art. 2.—*Dans chaque cas particulier, les hautes parties contractantes, avant de s'adresser à la Cour permanente, d'arbitrage, signeront un compromis spécial déterminant nettement l'objet du litige, l'étendue des pouvoirs des arbitres et les détails à observer en ce qui concerne la constitution du tribunal arbitral et la procédure.*

Art. 3.—*Le présent arrangement est conclu pour une durée de cinq années, à partir du jour de la signature.*

honour of the two Contracting States, and do not concern the interests of third parties.

*Article II.*

In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall *conclude a special Agreement* defining clearly the matter in dispute and the scope of the powers of the arbitrators, and fixing the periods for the formation of the Arbitral Tribunal, and the several stages of the procedure.

*Article III.*

The present Convention *shall be ratified by the President of the United States of America by and with the advice and consent of the Senate thereof*, and by

. The ratifications shall be exchanged at Washington as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

*Article IV.*

The present Convention is concluded for a period of five years, dating from the day of the exchange of its ratifications.

of the two Contracting States, nor the interests of any State other than the two Contracting States, are involved.

*Article II.*

In each particular case the High Contracting Parties, before addressing themselves to the Permanent Court of Arbitration, *shall sign a special undertaking* [in French—*compromis*] determining clearly the subject of dispute, the extent of the arbitral powers, and the periods to be observed in the constitution of the Arbitral Tribunal, and the procedure.

*Article III.*

The present arrangement is concluded for a duration of five years from the date of signature.

The text of the Anglo-American Treaty signed by the late Hon. John Hay and by Sir Mortimer Durand on December 12, 1904, was submitted shortly after by President Roosevelt to the Senate of the United States for ratification. The Senate inserted in Article II. the word "treaty" in the place of the word "agreement," which under the United States Constitution made senatorial sanction of the *compromis* requisite. With this alteration they returned it to the President, who considered the alteration left him no alternative but to consider it and the other similar treaties which had been negotiated as negatived.

The questions in connection with these Treaties to which attention should be given are—

1. Whether Article II. in both treaties is necessary or useful.
2. Whether Article III. in the Anglo-American text is not beyond the scope of an International Treaty; whether the Senate's objection does not introduce a constitutional question of a purely domestic character into an arrangement with other Powers.

I.

The principle of Article II. is borrowed from Article XXXI. of The Hague Convention. It figures in the Convention under the heading of "Arbitral Procedure," and it was, in fact, borrowed from the ordinary procedure in arbitration practice. Article XXXI. is as follows:—

"The Powers which have recourse to arbitration sign a special act [*compromis*][1] in which are clearly set out the matter in dispute as well as the scope of the powers of the arbitrators."

[1] *See* p. 26. The English equivalent of the word *Compromis*, in private law, is "submission." In Diplomacy it would be "protocol of submission."

M. Delcassé, who drew up the form which was with slight modifications ultimately adopted, no doubt inserted the clause in the supplementary convention on account of the insufficiency of Article XXXI.[1]; but all the supplementary convention was intended to do was, as is therein indicated, to make a reference to arbitration obligatory in certain cases.

All the signatories of the Peace Convention have already sanctioned and agreed to the procedure of The Hague Court, and, subject to the redrafting of Article XXXI., it is mere redundance to repeat in a supplementary convention the first step in such procedure. The necessity of laying the precise points in question before the arbitrators, as before judges in our domestic Courts, is too obvious to need to be argued. It is required in every system of judicial procedure, and, in the nature of things, it is the first detail to be settled, after the principle of arbitration itself has been agreed to by the parties. One might go further, and say that this precise determination of the issue belongs to all kinds of procedure. Thus it belongs to what in diplomacy are called the protocols of a question. Foreign offices are constantly reducing matters of difference to writing, and whittling them down to their simplest expression in ways binding on their respective countries, without such protocols being considered as Treaties or Conventions. In short, if the second Article had been omitted from the Anglo-French Treaty, it would have made no change, seeing that diplomatic necessity and usage, in the very nature of things, would have led the Governments before they resorted to arbitration to define the precise issue to be adjudicated upon, and any other details of procedure which have necessarily to be determined *in limine litis*.

The introduction of the word "Treaty" instead of "Agreement," moreover, would probably have made Parliamentary ratification necessary by practically all States except Great Britain. Why, however, should other nations be compelled, if they do not wish to do so, to submit each individual act of reference for Parliamentary ratification? This shows how unquestionably the subject of Parliamentary ratification is one affecting the domestic relations of each contracting country exclusively.

[1] See p. 26, the form in which I have redrafted Article XXXI. in order to incorporate the different alterations which have been shown by experience to be necessary.

## II.

The mode of ratification does not belong to the contents of an International Treaty. It is essentially a matter for internal legislation. Article III., in stipulating that the treaty shall be ratified by the President of the United States *by and with the advice and consent of the Senate thereof*, imports into it an element foreign to the idea of a Sovereign State. A State in its outward relations is represented by its Executive alone. It is undesirable to give foreign States the remotest justification for inquiring into the legitimacy of the Executive entrusted by a nation with its external action.

The difficulty appears to be that the Senate is determined that no reference whatsoever to arbitration shall be made without some kind of sanction by it. The point is not new.

In the original text of the unratified Anglo-American Treaty of Arbitration of 1897, as signed by the Plenipotentiaries, there was no such clause as Article II. The Senate, when the Treaty was submitted for their ratification, added a clause almost identically in the sense of the modification they have made in the new Treaties. The proviso they added was—

"And any agreement to submit, together with its formulations, shall in every case, before it becomes final, be communicated by the President of the United States to the Senate with his approval, and be concurred in by two-thirds of the Senators present."

It is seen that the United States Senate have not departed from the attitude they assumed in 1897, and the question will be how to meet their requirements without modifying the procedure of The Hague Court under the existing Convention.

The matter belongs purely to the domain of domestic or constitutional law. The American Senate has a position in the American polity quite different from that of any of the Upper Houses in Europe. Its executive functions permit it to exercise a check on the administrative authority in all external matters. Any provisions for the restriction of the Presidential powers, however, are beyond the scope of an International Treaty.[1]

[1] I humbly submit that it seems to me, as an outsider, possible to embody the senatorial objections in the ratifying enactment, both as regards the Presidential powers and the appointment of the American arbitrators.

# II

# PROPOSED MODIFICATIONS IN THE PROCEDURE OF THE HAGUE COURT

Among the subjects which the Russian invitation to the second Hague Conference enumerates, is that of modifications in the procedure of The Hague Court. A number of suggestions have been made in the course of the four cases which have been tried. These are embodied in a special note appended to this chapter. The chief difficulty which has occurred, and which has been common to all four, has been that of the language. Arbitrators and Counsel alike have in general been appointed without reference to their knowledge of the languages involved. It seems desirable to fix the French language once and for all as that of the Court, as proposed by the arbitrators in "the *Perpetual Leases*" case; and, as suggested by the arbitrators in the *Pious Fund* case, that Counsel be appointed with a view to their knowledge of the language to be used, whatever it may be. So necessary does the adoption of some such rule seem, that in the *Venezuela Indemnities* case the arbitrators found it necessary to overrule the provision in the *compromis* on the subject, in order to make any progress at all.[1]

[1] See pp. 27–28.

Another matter which has occasioned criticism on the Continent is the costliness of the procedure in the cases which have hitherto been tried by The Hague Court. This costliness has been largely due to the lengthening of the procedure owing again to the language difficulty.[2]

[2] In the *Pious Fund* case five judges were paid five thousand dollars each. To this expense add that for counsel, a staff of clerks, French and English stenographers, and printing the evidence and arguments. "The objection might not be weighty with the great nations, but the expense would press heavily against the smaller States with limited resources. It is a matter which should commend itself to the consideration of the great Powers."—(J. W. Foster, Report of Universal Congress of Jurists, 1904, p. 37.)

No special procedure has been discussed, or provided, for matters of minor importance in which reference to more than a

single arbitrator under Article XXXII. is hardly justifiable. The *Muscat Dhows* case would probably have been just as satisfactorily dealt with by a single arbitrator, with a procedure confined to printed memoirs as in the *Waima* and *Sergent Malamine* case,[1] on which the model protocol among the suggested drafts, appended to the present volume, is based.[2]

[1] Convention, April 3, 1901.

[2] See p. 149.

The propriety of a member of the Permanent Court appearing as counsel for any party in a case before it, also has been questioned. In both the *Pious Fund* and *Venezuela Indemnity* cases, members appeared as counsel. In the latter instance protests were filed by both Venezuela and Great Britain.[1]

[1] See correspondence on the subject, p. 283.

# NOTE ON PROPOSED MODIFICATIONS IN PROCEDURE OF THE HAGUE COURT

On the conclusion of the proceedings at The Hague Court in the *Pious Fund* and *Venezuela Indemnities* cases, the Arbitrators drew up recommendations[1] on matters of procedure which had arisen in the course of the trial.

In the *Japanese Perpetual Leases* and *Muscat Dhows* cases other points arose.

The different points are set out below under the Articles to which they apply.

(N.B.—*The text of the part of the Convention relating to Arbitration is in the smaller type, the suggestions in the larger.*)

[1] See these Recommendations in full, p. 273 *et seq.*

## TITLE IV. OF THE HAGUE PEACE CONVENTION.

### On International Arbitration.[2]

[2] The text of the Convention used is the English official translation published in the British Report.

### Chapter I.—*On the System of Arbitration.*

Art. XV.—International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law.

Art. XVI.—In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognised by the Signatory Powers as the most effective, and at the the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

Art. XVII.—The Arbitration Convention is concluded for questions already existing[3] or for questions which may arise eventually.

It may embrace any dispute, or only disputes of a certain category.

[3] In reference to this Article, M. Beldiman, the Roumanian Plenipotentiary at the Conference, made the following declaration: "The Royal Government of Roumania declares that it cannot adhere to Article XVII. except with the reservation, to be placed in the minutes, that it has decided in no case to accept international arbitration for questions and difficulties anterior to the conclusion of the present Convention.

Art. XVIII.—The Arbitration Convention implies the engagement to submit loyally to the Award.

Art. XIX.—Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later, new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

### Chapter II.—*On the Permanent Court of Arbitration.*

Art. XX.—With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Signatory Powers undertake to organise a permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the Rules of Procedure inserted in the present Convention.

Art. XXI.—The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special Tribunal,

Art. XXII.—An International Bureau, established at The Hague, serves as record office for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives, and conducts all the administrative business.

The Signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by special Tribunals.

They undertake also to communicate to the Bureau the Laws, Regulations, and documents eventually showing the execution of the awards given by the Court.

This Article leaves a number of essential matters untouched. In view of this circumstance, the Arbitrators in the *Pious Fund* case proposed the following addition to the Article:

*Powers in litigation which have agreed to submit any dispute between them to the Permanent Court of Arbitration, shall immediately upon signature of the* compromis, *communicate it to the International Bureau, and request it to take the necessary measures for the installation of the arbitral tribunal;*

*The same Powers shall, after appointment of their Arbitrators, communicate their names to the International Bureau without delay;*

*The International Bureau, on its part and without delay, shall communicate to the Arbitrators so appointed the signed* compromis, *and the names of the members of the arbitral tribunal already appointed.*

Art. XXIII.—Within the three months following its ratification of the present Act, each Signatory Power shall select four persons at the most, of known competency in questions of international law,[1] of the highest moral reputation, and disposed to accept the duties of Arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified by the Bureau to all the Signatory Powers.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place shall be filled in accordance with the method of his appointment.

Art. XXIV.—When the Signatory Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the Arbitrators called upon to form the competent Tribunal to decide this difference, must be chosen from the general list of members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:

Each party appoints two Arbitrators, and these together choose an Umpire.

If the votes are equal, the choice of the Umpire is entrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

The Tribunal being thus composed, the parties notify to the Bureau

[1] This restriction to persons "of known competency in questions of international law" has not been acted upon. Whether it is wise to appoint as members of a judicial tribunal persons who have had no legal training and experience is a question upon which it is difficult to express a general view based on actual practice.

In France the *tribunals of commerce* are an instance of the satisfactory working of lay judges. In Germany a mixed system was thought better. In England the jury co-operates even with the civil judge in the hearing of causes.

Lord Chief-Justice Alverstone, speaking at the Brussels Conference of the International Law Association in 1895, observed:—

"The dream and aim of many of the most competent minds is that in order to realise the highest ideal, and to obtain the greatest amount of success, there must be established a permanent Court supported by civilised nations, to which Court all civilised nations will appeal, in lieu of adopting the terrible arbitrament of war. Speaking of the ultimate aim of this or any similar association, I do not dissent from this view, nor would I ask anyone to forego one jot of that ideal, or abstain from pressing it forward by advocacy or argument. I must, however, point out that there is an intermediate condition of things, no less important, no less demanded by events of everyday national life. I mean the reference to the arbitration of tribunals appointed *ad hoc* of questions which may from time to time arise. Those who have had personal experience in diplomatic work and in international relations, know that the nature of the questions which might be dealt with by arbitration is so various, that it by no means follows that a permanent tribunal of the kind indicated would be necessary, or even suitable, for the settlement of them all. The subject is so vast and so interesting that I with difficulty resist the temptation to enter fully into it, but I will briefly allude to three typical instances:—

1. Cases of boundary;
2. Cases of damage for an admitted wrongful act;
3. Cases of dispute involving questions of legal right.

Instances of all three can be found in the record of International Arbitration.

In the first case, viz. Boundaries, a small, impartial commission of military or naval men or travellers visiting the *locus in quo*, would be admitted to be the best tribunal. In the second, one or more commercial men of standing could settle, in a comparatively short period, the question of amount to the satisfaction of all parties. In the third, legal training, judicial knowledge, and power to appreciate legal arguments would be absolutely essential."—(*Report of 17th Conference held at Brussels* 1895, p. 38.)

their determination to have recourse to the Court, and the names of the Arbitrators.

The Tribunal of Arbitration assembles on the date fixed by the parties.

The members of the Court, in the discharge of their duties and out of their own country, enjoy diplomatic privileges and immunities.

Art. XXV.—The Tribunal of Arbitration has its ordinary seat at The Hague.

Except in cases of necessity, the place of session can only be altered by the Tribunal with the assent of the parties.

Art. XXVI.—The International Bureau at The Hague is authorised to place its premises and its staff at the disposal of the Signatory Powers for the operations of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the Regulations, be extended to disputes between non-Signatory Powers, or between Signatory Powers and non-Signatory Powers, if the parties are agreed on recourse to this Tribunal.

Art. XXVII.—The Signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the conflicting parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

Art. XXVIII.—A Permanent Administrative Council composed of the Diplomatic Representatives of the Signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as President, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

This Council will be charged with the establishment and organisation of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court, and will provide for its installation.

It will settle its Rules of Procedure and all other necessary Regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Signatory Powers without delay the Regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the administration, and the expenses.

Art. XXIX.—The expenses of the Bureau shall be borne by the Signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

## Chapter III.—*On Arbitral Procedure.*

Art. XXX.—With a view to encourage the development of arbitration, the Signatory Powers have agreed on the following Rules which shall be applicable to arbitral procedure,[1] unless other Rules have been agreed on by the parties.

Art. XXXI.—The Powers who have recourse to arbitration sign a special Act ("Compromis"), in which the subject of the difference is clearly defined, as well as the extent of the Arbitrators' powers. This Act implies the undertaking of the parties to submit loyally to the award.[2]

[1] This procedure has been found expensive for cases of minor importance. There is, however, no reason why, under Art. XXXII., a single arbitrator should not be appointed, either with power to frame his own procedure or with a special procedure fixed in the protocol of submission. Compare p. 21. See p. 149.

[2] This is redundant. See Art. XVIII.

This "act" is only an adjunct to the general agreement to refer differences to arbitration. In English private law, the equivalent of *compromis* is "submission." By it are regulated all matters of detail, the principle of arbitration having been agreed to. Its object is to place a well-defined issue before the Arbitrators, as well as to settle all matters of detail, such as time and place of sittings, language to be used,[3] expenses of the reference, etc. The English term which would best convey its sense is *protocol of submission.*

[3] See observations on Art. XXXVIII.

If the recommendation of the Arbitrators in the *Pious Fund* case in reference to Art. XXXVIII. is to be followed, the words "the language to be used" should be added. It seems to me that it would make the nature of the *compromis* clearer, if to these words were also added "and any other matters of detail." The word "special" is redundant, and the last sentence is useless, and should be suppressed. The article would then read:—

"*The H.C.P. who have recourse to arbitration, sign a* protocol of submission *in which the subject of the difference, the extent of the Arbitrators' powers, and any other matters of detail, such as the time and place of sittings, the election of the President of the Court,*[4] *the language to be used, and any special points of procedure (subject or not to the provisions of Arts. LV. and LVI.), shall be clearly determined.*"[5]

[4] See observations on Art. XXXIV.

[5] See French translation, p. 187.

Art. XXXII.—The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Act.

Failing the constitution of the Tribunal by direct agreement between the parties, the following course shall be pursued:

Each party appoints two Arbitrators, and these latter together choose an Umpire.

In case of equal voting, the choice of the Umpire is entrusted to a third Power, selected by the parties by common accord.

If no agreement is arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

Art. XXXIII.—When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitral procedure is settled by him.

Art. XXXIV.—The Umpire is by right President of the Tribunal.

When the Tribunal does not include an Umpire, it appoints its own President.

Under Art. XXXII. and following articles, the Arbitrators appointed by the Powers in dispute choose the umpire, who, under this article, becomes by right President of the tribunal.

The Arbitrators in the *Pious Fund* case called attention to the fact that the member of the arbitral tribunal chosen by his colleagues, who have been appointed directly by the Powers in litigation, is not necessarily the "Umpire" in the technical sense of the word. "He is only the member of the arbitral tribunal who, having the confidence of his colleagues, is chosen as their colleague. It might occur that this member of the arbitral tribunal, chosen by his colleagues, might absolutely refuse to take the presidency. Owing to his refusal to preside, the Court might be deprived of the services of some very distinguished jurist or statesman."

In consideration of these circumstances, the Arbitrators in the *Pious Fund* case suggested the following additions to the above article:—

"The compromis *shall leave to the members of the arbitral tribunal full powers to select from among themselves the President of the tribunal; and*

"*The appointment of the President of the arbitral tribunal shall take place at the first meeting of the members appointed or chosen.*" [1]

[1] Why not "first meeting of the Court"?

> Art. XXXV.—In case of the death, retirement, or disability from any cause of one of the Arbitrators, his place shall be filled in accordance with the method of his appointment.
>
> Art. XXXVI.—The Tribunal's place of session is selected by the parties. Failing this selection, the Tribunal sits at The Hague.
>
> The place thus fixed cannot, except in case of necessity, be changed by the Tribunal without the assent of the parties.
>
> Art. XXXVII.—The parties have the right to appoint delegates or special agents to attend the Tribunal, for the purpose of serving as intermediaries between them and the Tribunal.
>
> They are further authorised to retain, for the defence of their rights and interests before the Tribunal, counsel or advocates appointed by them for this purpose.
>
> Art. XXXVIII.—The Tribunal decides on the choice of languages to be used by itself, and to be authorised for use before it.

The Arbitrators in the *Pious Fund* case, while acknowledging the wisdom of this article, called attention to the necessity of arriving at an agreement beforehand with regard to the language to be used before the tribunal. It was "absolutely necessary that the point be determined prior to the commencement of the labours of the tribunal, in order that the selection of the agent and counsel might be made with a view to their knowledge of the language in which the arguments before the Arbitrators were to be carried on. The necessity of translating for the use of counsel the speeches made before the tribunal inevitably caused great loss of time."

They therefore suggested that future *compromis* should state the decision of the contracting parties on this subject.

The language question came up again in the *Venezuela Indemnities* case, and gave rise to the following decision, which explains itself:—

Whereas Germany, Great Britain, Italy, and Venezuela by the protocol of May 7, 1903, signed at Washington,[2] declared (Art. IV.) that the English language should be used in the proceedings; and that none of the Powers

[2] See protocol, p. 32.

adhering to the protocol, except France, have made formal reservations concerning the above-mentioned stipulation; and that the reservation made by France [1] has met with no formal opposition on the part of the interested Powers; and whereas the decision of the tribunal on the languages to be used implies no preference for any one language, but is dictated only by considerations of convenience having to do with this special case alone; and that it is impossible to expect the members of the tribunal and the representatives of the parties to use languages with which they are not familiar; and seeing that the French language is generally employed in all international meetings and transactions—the tribunal decides:

(1) The protocols, the decisions, and the sentence of the tribunal of arbitration shall be drawn up in English and in French, both having the same authoritative and judicial value;

(2) The written and printed memoranda shall be drawn up in the English language and be accompanied by a translation in the language of the Power by which they are filed.

[1] See p. 33.

On protest being made that this was not in accordance with the *compromis*, the Court reconsidered the above decision, and delivered a second one in the following terms:—

(1) In accordance with the Art. IV. of the protocol of May 7, 1903, the English language is recognised as the official language of the proceedings, and in accordance with the exact meaning of the said article, arguments may be presented in another language only with the permission of the tribunal.

(2) That the tribunal, by the decision just delivered, has admitted, within the limits indicated by this decision, the French language as subsidiary, since it is familiar to the members of the tribunal and to the majority of the representatives of the parties.

One of the German counsel thereupon made the following statement: "I am personally of the opinion that the decision of the Court contains not merely an interpretation of, but a deviation from Art. IV. of the protocol signed by Germany and Venezuela on May 7, 1903. If this opinion is correct, the Court has, as I look at it personally, in its decision gone beyond the discretion granted to it by Art. XLVIII. of the Convention of July 29, 1899."

In the Japanese *Perpetual Leases* case (award May 22, 1905), the language question was once more raised, and the following decision given (November 21, 1904):—

The Court, by virtue of the power conferred on it by Art. XXXVIII. of The Hague Convention, decides: that the French language shall be that of the Court; nevertheless, the parties shall have the right to present either in French or in English any communications they may have to make to the Court.

In the *Muscat Dhows* case it is notorious that the greatest confusion resulted from the counsel of the parties not being familiar with each others' languages.

Art. XXXIX.—As a general rule the arbitral procedure comprises two distinct phases: preliminary examination and discussion.

Preliminary examination consists in the communication by the respective agents to the members of the Tribunal and to the opposite party of all printed or written Acts and of all documents containing the arguments invoked in the case. This communication shall be made in the form and within the periods fixed by the Tribunal in accordance with Art. XLIX.

Discussion consists in the oral development before the Tribunal of the arguments of the parties.

In reference to this article, the Arbitrators in the *Pious Fund* case declared their approval of the distinction between the preliminary examination and the discussion "as absolutely justified and necessary." It was not, however, practicable unless the parties in dispute observed it by producing all the records and documents prior to the commencement of the arguments. "In other words, the preliminary examination, as a rule, ought to be finished before the commencement of the arguments." Only by way of a rare exception, and after authorisation in due form, should the production of new records and documents be allowed in the course of the argument, and then only under the reserves specified in Art. XL. and following articles of the Convention.

In view of these observations, the Arbitrators recommended that the distinction between the two phases, namely, the preliminary examination and the argument, be observed as strictly as possible by the parties in dispute, and that, if necessary, a longer time be granted by the parties for communication through the International Bureau or direct to the members of the tribunal, and *vice versa*, of all documents and records;

That the arbitral tribunal, once assembled, should, without loss of time, proceed with the arguments; and, after the close of the arguments,—*i.e.* in the time intervening between the close of the arguments and the delivery of the arbitral decision,—no communication of any new records or writings should be allowed on the part of the parties in litigation.

> Art. XL.—Every document produced by one party must be communicated to the other party.

In the course of the *Venezuela Indemnities* case one of the British counsel (Mr. Arthur Cohen, K.C.) submitted the following rule, which he requested the Court to adopt:—

*If in the cases or countercases submitted to the Arbitrators any party shall have specified or alluded to any report or document in its own exclusive possession without annexing a copy, such party shall be bound, if any other party thinks proper to apply for it, to furnish that party with a copy thereof, and any party may call upon any other party through the Bureau to produce the originals or certified copies of any papers adduced as evidence; and such originals or certified copies shall be thereupon produced as soon as is reasonably possible.*

The President stated that the Tribunal had no objection to granting this request, provided the production of such documents should cause no delay in the arguments (sitting of Oct. 5, 1903).

The subject of communication of documents came up again in the course of the same case, on Mr. Penfield (U.S.A. and Venezuela) reading a statement made by Mr. Bowen (U.S.A. and Venezuela) which had not appeared in any of the documents lodged with the Court. At the instance of Sir R. Finlay (Great Britain) the Court decided as follows:—

> "Whereas, according to the rules of The Hague Convention, every document produced with whatever object by any party must be communicated to all the others;

"That the document in question not being among the documents lodged with the Tribunal; decides:

"That copies of the said document be communicated by Mr. Penfield to the other parties" (sitting of Nov. 9, 1903).

Art. XLI.—The discussions are under the direction of the President.

They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in the *procès-verbaux* drawn up by the Secretaries appointed by the President. These *procès-verbaux* alone have an authentic character.

Art. XLII.—When the preliminary examination is concluded, the Tribunal has the right to refuse discussion of all fresh Acts or documents which one party may desire to submit to it without the consent of the other party.

Art. XLIII.—The Tribunal is free to take into consideration fresh Acts or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these Acts or documents, but is obliged to make them known to the opposite party.

Art. XLIV.—The Tribunal can, besides, require from the agents of the parties the production of all Acts, and can demand all necessary explanations. In case of refusal, the Tribunal takes note of it.

Art. XLV.—The agents and counsel of the parties are authorised to present orally to the Tribunal all the arguments they may think expedient in defence of their case.

Art. XLVI.—They have the right to raise objections and points.

The decisions of the Tribunal on these points are final, and cannot form the subject of any subsequent discussion.

Art. XLVII.—The members of the Tribunal have the right to put questions to the agents and counsel of the parties, and to demand explanations from them on doubtful points.

Neither the questions put nor the remarks made by members of the Tribunal during the discussions can be regarded as an expression of opinion by the Tribunal in general, or by its members in particular.

Art. XLVIII.—The Tribunal is authorised to declare its competence in interpreting the "Compromis" as well as the other Treaties which may be invoked in the case, and in applying the principles of international law.

Art. XLIX.—The Tribunal has the right to issue Rules of Procedure for the conduct of the case, to decide the forms and periods within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

In the *Venezuela Indemnities* case the Court exercised the rights conferred by this article in the form of an exhaustive Regulation in the following terms:—

In accordance with Articles II. and IV. of the protocol of May 7, 1903, and Articles XXXIX., XL., XLII., and XLIX. of the Convention of July 29, 1899,

The Court decides:

(1) The parties shall present to the Court, and exchange with each other, in a sufficient number of copies, the printed or written acts and the documents containing the arguments of their case, not later than the 18th of October.

(2) The written or printed replies to these acts and documents can be produced by the parties under the same conditions, up to the 2nd of November, inclusive.

(3) After the expiration of these periods, but before the close of the oral discussion, the parties can present no acts or documents except with the

special permission of the Tribunal, and under the condition that they shall communicate them to all the other parties.

(4) The next meeting of the Court for the oral discussion shall take place on the 4th of November next.

In accordance with Articles II. and IV. of the protocol of May 7, 1903, and Articles XXXIX., XLV., and XLIX. of the Convention of July 20, 1899, the Court, considering it necessary to determine at once the order of the oral discussion which will be held before it after the expiration of the time allowed for the presentation of the written documents,

Decides :

(1) The delegates of the parties (agents and counsel) shall plead in the alphabetical order of the countries which they represent ;

(2) All the delegates of the parties may take part in the first arguments ;

(3) As to the replies, there shall be only one from each party ; this reply may be made by any one of the representatives of that party chosen by it.

Art. L.—When the agents and counsel of the parties have submitted all explanations and evidence in support of their case, the President pronounces the discussion closed.

Art. LI.—The deliberations of the Tribunal take place in private.

Every decision is taken by a majority of members of the Tribunal.

The refusal of a member to vote must be recorded in the *procès-verbal*.

Art. LII.—The award, given by a majority of votes, is accompanied by a statement of reasons. It is drawn up in writing, and signed by each member of the Tribunal.

Those members who are in the minority may record their dissent when signing.

Art. LIII.—The award is read out at a public meeting of the Tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

Art. LIV.—The award, duly pronounced and notified to the agents of the parties at variance, puts an end to the dispute definitely and without appeal.

Art. LV.—The parties can reserve in the "Compromis" the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the award, and which, at the time the discussion was closed, was unknown to the Tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognising in it the character described in the foregoing paragraph, and declaring the demand admissible on this ground.

The "Compromis" fixes the period within which the demand for revision must be made.

The Arbitrators in the *Pious Fund* case made the following reflections on the right of revision, which they feared might, in practice, be a source of "very grave inconvenience":—If the period, within which the demand for revision was admissible, were very short (as that stipulated in the protocol of Washington of May 22, 1902 [1]), it would very seldom happen that a new fact, giving rise to a revision, would be discovered in time. If, on the contrary, a rather long period were stipulated, or if the right were granted of demanding revision at any time, the obligatory force of the arbitral verdict would remain for a long time or for ever in suspense. This seemed very undesirable, as the

[1] In the *Pious Fund* protocol of submission the time fixed by Article XIII. for lodging the application for revision was eight days. The new evidence had to be lodged within ten days after the granting of the revision.

arbitral verdict would almost always occasion a feeling of discontent in one of the parties. If this feeling were not speedily extinguished by reason of the *chose jugée* or the *fait accompli*, the conflict between the nations in dispute might assume an acute character, endangering international peace. Hence they recommended that in the *compromis* the smallest possible use be made of the power accorded by Article LV. of The Hague Convention.

Art. LVI.—The award is only binding on the parties who concluded the "Compromis."

When there is a question of interpreting a Convention to which Powers other than those concerned in the dispute are parties, the latter notify to the former the "Compromis" they have concluded. Each of these Powers has the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the award is equally binding on them.

Art. LVII.—Each party pays its own expenses and an equal share of those of the Tribunal.

*General Provisions.*

Art. LVIII.—The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers who were represented at the International Peace Conference at The Hague.

Art. LIX.—The non-Signatory Powers who were represented at the International Peace Conference can adhere to the Present Convention. For this purpose they must make known their adhesion to the Contracting Powers by a written notification addressed to the Netherlands Government, and communicated by it to all the other Contracting Powers.

Art. LX.—The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a subsequent Agreement among the Contracting Powers.[1]

[1] See p. 43.

## Protocol of Submission to Arbitration of the *Venezuela Indemnities* Case.

Whereas protocols have been signed between Venezuela, on the one hand, and Italy, Great Britain, Germany, United States of America, France, Spain, Belgium, The Netherlands, Sweden and Norway, and Mexico, on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government; And whereas certain further questions

arising out of the action taken by the Governments of Italy, Germany, and Great Britain in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods; And whereas the Powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the Convention for the pacific settlement of international disputes signed at The Hague on the 29th July 1899;

The Governments of Venezuela and . . . with a view to carry out that resolution, authorised their representatives, that is to say, etc.
to conclude to the following agreement:—

Art. I.—The question as to whether or not Italy, Germany, and Great Britain are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the Tribunal at The Hague.

Venezuela having agreed to set aside 30 per cent. of the Customs revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the tribunal at The Hague shall decide how the said revenues shall be divided between the blockading Powers on the one hand and the other creditor Powers on the other hand, and its decision shall be final.

If preferential or separate treatment is not given to the blockading Powers, the Tribunal shall decide how the said revenues shall be distributed among all the creditor Powers, and the parties hereto agree that the Tribunal in that case shall consider, in connection with the payment of the claims out of 30 per cent., any preference or pledges of revenues enjoyed by any of the creditor Powers, and shall accordingly decide the question of distribution so that no Power shall obtain preferential treatment; and its decision shall be final.

Art. II.—The facts on which shall depend the decision of the questions stated in Art. I. shall be ascertained in such manner as the Tribunal may determine.

Art. III.—The Emperor of Russia[1] shall be invited to name and appoint from the members of the permanent Court of The Hague three Arbitrators to constitute the Tribunal which is to determine and settle the questions submitted to it under and by virtue of this agreement.

None of the Arbitrators so appointed shall be a citizen or a subject of any of the signatory or creditor Powers.

This Tribunal shall meet on the first day of September 1903, and shall render its decision within six months thereafter.

[1] Russia was the only great Power having no interest involved in the difficulty.

Art. IV.—The proceedings shall be carried on in the English language; but arguments may, with the permission of the Tribunal, be made in any other language also.[2]

Except as herein otherwise stipulated, the procedure shall be regulated by the convention of The Hague of July 29, 1899.

[2] See p. 27 *et seq.*

Art. V.—The Tribunal shall, subject to the general provision laid down in Art. LVII. of the international convention of July 29, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

Art. VI.—Any nation having claims against Venezuela may join, as a party, in the arbitration provided for by this agreement.

Washington, D.C., *May* 7, 1903.

The undersigned nations having claims against Venezuela hereby join with her as parties in the arbitration provided for in the foregoing protocol—

United States of America.
Republic of Mexico.
Sweden and Norway.

*May* 27, 1903.

L'Ambassadeur de France, dûment autorisé et agissant au nom de son Gouvernement, adhère au protocole ci-dessus, sous réserve qu'il est bien

entendu que l'Art. IV. dudit protocole ne fera pas obstacle à l'application de la disposition de l'Art. XXXVIII. de l'acte de La Haye, aux termes de laquelle c'est le tribunal arbitral qui décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.[1]

1*er Juin* 1903.

Le Ministre de Belgique, dûment autorisé et agissant au nom de son Gouvernement, adhère au protocole ci-dessus.

12 *Juin* 1903.

Le Ministre des Pays-Bas, dûment autorisé et agissant au nom de so Gouvernement, adhère au protocole ci-dessus.

Washington, *le* 13 *Juin* 1903.

[1] See p. 27 *et seq.*

# NOTE ON PROCEDURE IN INTERNATIONAL COMMISSIONS OF INQUIRY (NORTH SEA INCIDENT)

The provisions of The Hague Peace Convention relating to International Commissions of Inquiry are as follow :—

## TITLE III.—On International Commissions of Inquiry.[1]

Art. IX.—In differences of an international nature *involving neither honour nor vital interests*, and arising from a difference of opinion on points of fact, the Signatory Powers *recommend* that the parties, who have not been able to come to an agreement by means of diplomacy, should, *as far as circumstances allow*, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

Art. X.—The International Commissions of Inquiry are constituted by special agreement between the parties in conflict.

The Convention for an inquiry defines the facts to be examined and the extent of the Commissioners' powers.

It settles the procedure.

On the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the Inquiry Convention, are decided by the Commission itself.

Art. XI.—The International Commissions of Inquiry are formed, unless otherwise stipulated, in the manner fixed by Art. XXXII.[2] of the present Convention.

Art. XII.—The Powers in dispute engage to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

Art. XIII.—The International Commission of Inquiry communicates its Report to the conflicting Powers, signed by all the members of the Commission.

Art. XIV.—The Report of the International Commission of Inquiry is limited to a statement of facts, and has in no way the character of an Arbitral Award.[3] It leaves the conflicting Powers entire freedom as to the effect to be given to this statement.

[1] The text used is that of English official translation given in the British Report.

[2] *See* text of this article, p. 26.

[3] In the *Declaration* in the *North Sea Incident* Inquiry the scope of the Commission was not so limited. It had the *character* to some extent of a reference to arbitration, and the report made, in accordance with the *Declaration*, contained findings which were in the nature of an *award*.

The reference under these articles of the difficulty which arose out of the North Sea Incident, and the appointment of the Commission of Inquiry, were embodied in a *Declaration* exchanged on November 12–25, 1904, at St. Petersburg, between the British and Russian Governments. It was as follows :—[4]

The Government of His Britannic Majesty and the Imperial Government of Russia being agreed to entrust to an International Commission of Inquiry,

[4] The following text is an unofficial translation.

assembled in accordance with Articles IX.–XIV. of The Hague Convention of July 29 (17), 1899, for the pacific settlement of International conflicts, the care of elucidating by an impartial and conscientious examination the questions of fact relating to the incident which took place during the night of October 21–22 (8–9), 1904, in the North Sea—in the course of which the firing of cannon of the Russian Fleet occasioned the loss of a boat and the death of two persons belonging to a flotilla of British fishermen, and also damages to other boats of the said flotilla, and wounds to the crew of some of these boats.—The undersigned, duly authorised to this effect, are agreed upon the following provisions :—

Art. I.—The International Commission of Inquiry shall be composed of five members (Commissioners), two of whom shall be officers of high rank in the British and Imperial Russian Navies respectively. The French and United States Governments shall each be requested to choose one of their naval officers of high rank to be a member of the Commission. The fifth member shall be elected by the four above-mentioned members. In case the four Commissioners should not agree as to the choice of a fifth member of the Commission, His Majesty the Emperor of Austria, King of Hungary, shall be invited to make the appointment.[1] Each of the two High Contracting Powers shall also appoint a jurist as assessor with *voix consultative*[2] and an Agent[3] officially charged to take part in the work of the Commission.

Art. II.—The Commission shall make an inquiry into and draw up a report upon all the circumstances relating to the North Sea Incident, and particularly upon the question of where the responsibility lies, and upon the degree of the blame affecting the nationals of the two High Contracting Powers, or of other countries, in case their responsibility should be ascertained by the inquiry.[4]

Art. III.—The Commission shall fix the details of the procedure which shall be followed by it for the accomplishment of the work with which it has been entrusted.

Art. IV.—The High Contracting Powers undertake to give to the International Commission of Inquiry, as far as possible, the means and facilities necessary to obtain a thorough knowledge and appreciation of the facts in question.

Art. V.—The Commission shall meet in Paris as soon as possible after the signature of this arrangement.

Art. VI.—The Commission shall present its report to the two High Contracting Powers, signed by all the members of the Commission.

Art. VII.—The Commission shall give all its decisions by a majority of the votes of the five Commissioners.

Art. VIII.—The High Contracting Powers undertake each to bear, *par réciprocité*,[5] their respective expenses in the inquiry incurred prior to the meeting of the Commission. As regards the expenses incurred by the International Commission of Inquiry from the date of its meeting for the arrangement of its working and the necessary investigation, they will be defrayed in common by the two Governments.

In faith of which, etc.

1 This provision emanated from Lord Lansdowne (Nov. 11, 1904).

2 "Voix consultative" means without voting power. The legal Assessors were a suggestion of Lord Lansdowne's, formulated as follows :—"Each of the High Contracting Parties shall appoint a legal Assessor, who shall sit with the Commissioners and assist them in their deliberations. The legal Assessor shall have no vote in determining the findings of the Commission."—(For. Office, Nov. 5, 1904.)

3 Lord Lansdowne explained as regards the Agents, that they would not perform duties of any very special character, merely acting as intermediaries between the Commission and the Governments concerned, and that the British Government would be quite content for them to be selected from among the members of the Russian and British Embassies in Paris.

4 This is an extension of the character of Commissions of Inquiry, as defined in Art. 14 of the Hague Convention. Thus the Commission in question had, to some extent, the character of a Court of Arbitration. See pp. 13, 14.

5 The object of this phrase is not apparent. The sense of the article seems perfectly clear without it.

In accordance with Art. I., Admirals were appointed by the British, Russian, United States, and French Governments.

These in turn resolved "to request the Emperor of Austria" to appoint Admiral Baron Spaun of the Austrian Navy as the fifth member of the Commission.[1]

[1] The Commission was thus composed of, Admirals Kaznakov (Russia), Fournier (France), Sir L. A. Beaumont (Great Britain), Davis (United States), and Spaun (Austria).

In accordance with Art. III., draft Rules of Procedure were submitted by the Commission, and after discussion between and with the representatives of the Parties on different points, decisions thereon were taken by the Commission, which were afterwards embodied in the Rules.

The Rules thus received the assent of the representatives of the Parties before becoming final;[2] they were adopted in the following terms[3]:

(N.B.—*Additional rules adopted in the course of the proceedings are distinguished by a difference of margin.*)

[2] The decisions on the points, upon which the representatives of the Parties intervened were as follows:—

(*a*) Decided that the witnesses may at their option—

1. Take an oath;
2. Make a declaration on their honour; or
3. Make a solemn declaration.

(Decided by the majority.)

(*b*) Agreed that written depositions of witnesses, whose presence cannot be obtained within a short time, be accepted *à titre de documents.*

(*c*) Decided that every witness shall, before being heard, declare his name, age, nationality, residence, and profession, and whether he is in the service of either of the Parties.

(*d*) Agreed that a witness, who may have declined or be unable to appear, may depose before the competent authorities of his place of residence on any question addressed to him by the Commission.

(*e*) Decided that, whereas Assessors and Agents may examine witnesses in all freedom, Counsel of the Parties shall not put questions to witnesses direct without having made known the terms of such questions to the President.

(*f*) Agreed that the shorthand writer's report of every deposition be accepted as the official report.

(*g*) Agreed that no witness shall be heard more than once on the same facts, unless by consent of the Commission, or in order to be confronted with another witness whose deposition is in contradiction with his.

(*h*) Decided that witnesses shall give their evidence without interruption (*d'un seul trait*), and without the assistance of documents, unless the employment thereof be justified by the nature of the facts in question.

All the above decisions were adopted at the sitting of January 11, 1905.

[3] The following text is an unofficial translation.

### A. *Composition of the General Secretariat.*

The President of the Commission shall be assisted by a General Secretary, invested with the following functions:

To see that shorthand reports of the meetings are taken;

To superintend the execution of all necessary translations;

To collect and file all documents handed to the Commission;

To enter into relations with the Embassies, in all matters of interest to the Commission;

To communicate to the newspapers reports drawn up in manner indicated in Art. 9 of title B; and,

Generally to insure under the direction of the President all the auxiliary working departments of the Commission.

A person authorised by each of the Embassies of the High Contracting Parties, if possible, shall give his assistance to the General Secretary.

### B. *Meetings of the Commission.*

1. The sittings of the Commission shall be public or not public, according to their object.

2. The sittings shall be public (1) when the statements of facts are made by the Agents of the Contracting Parties and the examination of the witnesses takes place; (2) when the Agents make known their conclusions; (3) and when at the last sitting the Commission delivers the result of its deliberations.

3. No other sittings of the Commission entailing deliberations shall be public.

4. The following will be allowed to attend the private sittings of the Commission: Assessors of the Commissioners; the Agents appointed by the Powers who have signed the Declaration and their Counsel; Persons authorised or convened by the Commission; Members of the General Secretary's staff; Assistants and Secretaries of the Commissioners.

5. The Commissioners and all the persons mentioned in Art. 4 shall, when the Commission is sitting, occupy the places indicated in the plan annexed hereto.[1]

6. The Publicity of the sittings shall be regulated as follows: An equal number of places will be reserved for the Press of each of the Commissioners' countries. A number at least equivalent to that above mentioned will be reserved for the whole Press of other countries. A certain number of entrance tickets will, through the secretariat, be placed at the disposal of each of the Commissioners for each public sitting.

7. The General Secretary's staff will attend to shorthand reports of the sittings being taken. They will only be filed with the documents of the Commission after having been read over and approved by each of the persons who shall have spoken, except evidence of witnesses, which will be filed with the Commission's documents in manner specified in Art. 7 of title E.

8. After each sitting, the President, assisted by the staff of the General Secretary, will draw up a minute stating briefly the work done. If necessary, this minute shall be read and corrected at the beginning of the next sitting. It shall be signed by the President, the two Agents, and by the General Secretary, and set up in ten copies, one of which will be filed with the Commission's documents, and the others handed to each of the Commissioners, Assistants, and Agents.

9. Lastly, a short report of the public sittings for the use of the Press shall be drawn up in accordance with the instructions given by the President of the Commission with the approval of the Commissioners.

10. The Official language of the Commission is French. However, the witnesses will be allowed to give their evidence in their own language. Every document handed to the Commission drawn up in any language but French, shall be accompanied by a French translation.

[1] A plan of the distribution of the space of the Hall was appended to the Rules.

C.—*Sittings of the Commission in the Council Chamber.*

1. During the sittings, the Commissioners will retire into their Council Chamber as often as they deem fit.

2. In principle, no persons other than the Assessors shall be allowed to be present at the Commissioners' deliberations, when held in the Council Chamber. Nevertheless, the Commissioners may call in, incidentally, any person entitled to attend the

sittings of the Commission, for the purpose of giving complementary information or advice.

3. Deliberations in the Council Chamber between the Commissioners and the Assessors shall not be published. Decisions resulting therefrom will be communicated, if deemed fit, at the open sittings.

### *ORDER OF HEARING.*

First, the President will put to the witness the questions specified in Art. 3 of title E.

Immediately thereafter he will give permission to speak, to the Agent calling the witness. The Agent shall let the witness make his declaration without interrupting him.

As soon as the deposition is ended, the Agent will, either personally or through his Counsel or Advocate, examine the witness on questions of detail.

The Advocate, Counsel, or Jurist to whom the Agent may have entrusted the putting of such questions, will beforehand submit such questions to the President, and the questions will not be put to the witness if the President should object.

The Agent of the other Party shall then have leave to speak, and he will observe the same rules of examination.

After the two Agents have successively proceeded with their examinations, the President will ask the first Agent if he wishes to put any further questions relating to detail or to any new facts brought in by the questions of the second Agent; any return to facts already dealt with is excluded by Art. 8 of title E.

(Adopted at sitting of *January* 20, 1905.)

## D.—*Statement of Facts.*

1. The Agents of the High Contracting Parties will proceed with the statement of the facts which are the subject of the examination carried on by the Commission of Inquiry.

These Agents will be allowed to have the assistance of Jurists, Counsel, or Advocates, whose names shall be previously submitted to and approved by the Commission.

2. The statements of the facts submitted for examination by the International Commission of Inquiry shall be set out, first, by the Agent of His Britannic Majesty's Government; and, secondly, by the Agent of the Government of His Majesty the Emperor of Russia.

3. These statements as well as the documents accompanying them shall be lodged in writing and simultaneously, at least two

days before they are read at a public sitting. No alteration can be made therein after they are lodged.

The production of documents subsequently to the handing in of the statements shall be allowed, provided the Commissioners shall have decided upon such admission.

(Adopted at sitting of *January* 7, 1905.)

E.—*Witnesses.*

1. Witnesses shall be cited before the Commission *ex-officio*, or at the request of the Parties.

2. The witnesses whom the High Contracting Parties will produce before the Commission, or whom the latter will cite, shall be examined in manner hereinafter mentioned.[1]

3. Before being heard, each witness shall declare his name, age, nationality, residence and occupation, and state whether or not he is in the service of one of the Parties. He will be requested to take an oath, or to declare on his honour that he will tell the whole truth, or to make a solemn declaration. The oath, declaration upon honour, solemn declaration, or refusal will be recorded in the report.[2]

4. Written depositions of witnesses unable to appear within a brief period will be accepted *a titre de documents*.[3]

5. Any witness who refuses or is unable to appear will be allowed to give his evidence before the competent authorities of his dwelling-place, on questions set by the Commission.

6. The Assessors and Agents will have entire freedom in carrying on the examination of the witnesses. As regards the Jurists, Counsel, or Advocates, they will not be allowed to address any questions direct to witnesses without having communicated the terms thereof to the President.[4]

7. The shorthand report of every deposition shall be accepted as an official report; the General Secretary will have it afterwards transcribed and read to the witness, who will sign it. If the witness declares that he refuses or is unable to sign, this will be mentioned in the report of the deposition.

Depositions elicited by the Commissioners and made in any other than the French language will be filed with their translations into French with the Commission's documents, the translation into French having been made under the care of the General Secretary's department. Depositions elicited by the Agents of the High Contracting Parties and made in any other than the French language will be handed to the General Secretary, together with their French translations, approved by the Agent who elicited such depositions.

[1] Witnesses shall be successively admitted to the Sitting-Hall; those who have not been heard during the day not to be admitted. (Adopted at sitting of *Jan.* 20, 1905.)

[2] As regards the administering of the oath, the Russian Agent made the following statement: "An oath made in accordance with Russian law being a strictly religious ceremony, the Agent of the Imperial Government has the honour to bring to the knowledge of the International Commission of Inquiry that all Officers of the Imperial Government called upon to testify as witnesses will give their evidence on honour." In accordance with this declaration, the Russian Officers at the request of the President declared on their honour to tell the whole truth. (Sitting of *Jan.* 31, 1905.)

[3] At the sitting of January 23, 1905, Sir Edward Fry (British Assessor) read the following note :—

"Having for many years occupied myself with questions of evidence, I have read with great interest the written depositions lodged by both sides since our last sitting. I wish, with your permission, to say a few words as to the nature of these depositions, without entering in to any appreciation of the facts, which appreciation belongs to the Commission.

"The most direct witnesses are undoubtedly, when reliable, the most valuable; such are those who speak of things which they themselves have seen.

"But among the other documents which are submitted to you, I think you will find some depositions which may be of help to you in your inquiry, some others are of relatively great value, some of little importance, and I have the honour to point out to you the necessity of a careful consideration of each of these documents, as well as of the different depositions which will be made before this Commission. In this analysis it is necessary to pay attention to different points :

"You will ask yourself, if the witness speaks of his own knowledge or only of what he has heard ;

"What was the psychological condition of the witness at the time of which he speaks ;

"If his mind was calm and impartial, or if he was subject to any preoccupation or obsession of any kind ;

"If the deposition of to-day is the same as that given by the witness immediately after the incident ;

"If he has modified it, perhaps involuntarily, in consequence of the pending proceedings ;

"Lastly, what relation exists between the fact testified to by the witness and the fact which alone is the object of this Inquiry."

[4] As regards questions put by the Commissioners themselves, the British Commissioner suggested that when a Commissioner spoke, the report should not mention his name, but simply say that a Commissioner had spoken. When the President spoke, *he* should be mentioned. The American Commissioner suggested that if a Commissioner did not wish to ask a question in his own name, he should be allowed to ask the President to put the question in the name of the Commission.

The Commissioners adopted these suggestions (sitting of Jan. 20, 1905).

After the evidence has been given, the shorthand writer for the foreign language shall withdraw to the General Secretary's Office. The hearing shall be suspended while he is transcribing his notes into his own language, and the translator is making a French translation thereof. As soon as these are done, the sitting will be resumed and the French translation of the evidence read. This *modus operandi* will be followed only in case the evidence is given in narrative form too long to be translated from memory instantly during the sitting.

(Adopted at sitting of Jan. 20, 1905.)

To enable the parties interested to follow entirely, during the public sittings, the questions and answers of the witnesses in the official language of the Commission, which is the French language, as well as in the English and Russian languages, which are the respective languages of the Contracting Parties, the following rule will be observed during the whole course of the proceedings:

"Any question put in any language other than the French language will immediately be translated into French first, and afterwards into the language of the witness.

"The answer of a witness will immediately be translated, into French first, and afterwards into the language used in putting the question."

(Adopted at sitting of Jan. 25, 1905.)

8. No witness shall be heard more than once on the same facts, except by consent of the Commission, or in order to be confronted with another witness whose evidence contradicts his.

9. Witnesses shall make their deposition without interruption (*d'un seul trait*), and without being allowed to read any written draft. Nevertheless, they may be authorised by the President to refer to memoranda or documents, if the nature of the facts testified to should render it necessary.

F.—*Conclusions and Report.*

1. When the Commissioners have exhausted all means of information, each Agent will be at liberty to lodge in writing the conclusions and observations which he wishes to submit to the

Commission. These conclusions and observations will be read by the Agents at a public sitting.

2. After the public sitting at which the reading of the conclusions and observations of the Agents takes place, the Commissioners will proceed to deliberate, in the Council Chamber, as to the results obtained, and draw up the Report provided for in Art. VI. of the declaration dated 12th–25th November 1904.

### G.—*Dates and Hours of Sittings.*

The Commission will fix at the end of each of its sittings the date and hour of the following sitting.

## III

# ADMISSION OF NON-SIGNATORIES TO HAGUE CONVENTIONS—EFFECT OF CONVENTIONS AS BETWEEN SIGNATORIES AND NON-SIGNATORIES

ARTICLE LX. of Peace Convention provides:—

"The conditions on which the Powers who were not represented at the International Peace Conference *can adhere to the present Convention* shall form the subject of a subsequent agreement."

This question is one of those which have to be dealt with at the second Conference.

Under Article XIII. of the Convention on the adaptation of the Geneva Convention to maritime war, non-signatory Powers who have agreed to the Geneva Convention of August 22, 1864, are allowed to adhere by written notice to the Dutch Government, the latter in turn notifying other Governments.

A similar provision is contained in the Preamble to the Convention on the Laws and Customs of War under Article IV., which is as follows:—

"Non-Signatory Powers are allowed to adhere to the present Convention. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherlands Government, and by it communicated to all the other Contracting Powers."

Article II. of the same Convention provides that it is only binding as between the contracting parties, and that it even ceases to be binding on a contracting party, if a co-signatory Power becomes allied in war against it with a non-signatory Power.

This does not, of course, release a signatory Power from observing any laws or customs of war which are recognised, apart from the Convention, as forming part of International Law.

The question of the adhesion of Powers, not represented at the Conference, to the Conventions gave rise to some correspondence between Sir Julian (afterwards Lord) Pauncefote and Lord Salisbury, then Foreign Secretary. Sir J. Pauncefote wrote that there had been strong opposition to the adhesion of such Powers being made conditional, and especially to any requirement being inserted that the consent of the signatory Powers to such adhesion should be obtained. Lord Salisbury, after taking the opinion of the Secretary of State for War as to the Convention relating to the laws and customs of war, replied "that so far as the revised Brussels and Geneva Conventions were concerned, the British Government agreed to unconditional adhesion of other Powers; but unless Great Britain was previously consulted and gave her assent, the British Government would not agree to admit the adhesion of a non-signatory Power to the Arbitration Convention. Ultimately Lord Salisbury instructed the British representatives (if any words were contained in the *Final Act* "implying the consent of Great Britain to the subsequent adhesion of other Governments without any general consent") to make the following reservation: "It is almost impossible for H.M. Government to admit that Great Britain, except with her own consent, formally conveyed in the usual manner by the signature of H.M. Plenipotentiary, can come under conventional obligations to another Government. Unless the consent of Great Britain has been previously obtained, any intimation of adhesion to this Convention by any Government or person but the Plenipotentiaries now signing it, will be regarded as non-avenue, so far as Great Britain is concerned." The British position as regards adhesions might be made clearer.

# IV

# INTERPRETATION OF ARTICLE LIII. OF CONVENTION ON LAWS AND CUSTOMS OF WAR

"Art. LIII. An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and generally all movable property of the State which may be used for military operations.

"*Railway plant*, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depots of arms, and generally all kinds of war material, even though *belonging to companies* or to private persons, are likewise material which may serve for military operations, but they *must be restored at the conclusion of peace, and indemnities paid for them on the termination of the war.*" (See also Article XLVI.)

This article was intended to be only a reproduction of the existing usage—of the rule that private property on land is liable to seizure, but not to confiscation. It therefore sets out a principle which is not only applicable as between signatories, but also as between signatories and non-signatories.

The belligerent invader has a general right, under the existing practice, of seizure of whatever he in his discretion may consider necessary for the purpose of breaking the power of the enemy. Railways are, for obvious reasons, extremely useful to belligerents, and in many cases have determined the course of hostilities. The invading commander is therefore entitled to take possession of the rolling stock, stations, and the whole of the railway administration, without distinction as to whether the railways belong to the invaded State or to private companies. Where the railways belong to the State, the owner is displaced by the invading State. When they belong to private companies, the general rules of warfare, applying to private property within the invaded State, are followed. That is to say, that the right to take does not imply the right to take without payment.[1]

[1] Mr. Hall observes on this subject that this distinction must be kept in mind, belligerent Governments and some writers being anxious to represent seizure, without payment, for military purposes as an act of sovereignty and not of military violence.—(W. E. Hall, *Int. Law*, 1895, p. 498.)

In fact, under the existing usage there is no difference of qualified opinion as to the right of the invading belligerent to make use of the railways belonging to private companies, nor as to the right of private companies to receive back the property undiminished or with indemnity for what may be wanting.

In the war of 1870–1871, the German army took possession of the Eastern, Northern, Orleans and Paris-Lyons-Mediterranean Railways, and during their occupation of them the German authorities received the proceeds of the traffic. After the conclusion of peace, a mixed commission was appointed to settle the sum to be returned to the companies, which also re-entered into possession of their rolling and other stock.

In the case of the South African Railway, which was seized by the British authorities during the Boer War, the British authorities, instead of returning their property to the company, appropriated it, and dealt with groups of shareholders independently. Their object apparently was to avoid having to include in any arrangement the shares which belonged to the Transvaal Government at the outbreak of the war.[1] The result of not complying with the established usage, however, was great confusion, and has, moreover, shaken confidence in the principle of exemption from confiscation of private property on land, which is one of the greatest achievements of International Law in connection with the usages of war.

[1] In an article in the *Law Quarterly Review* of Oct. 1905, in reply to one by myself in the previous number of the same Review, on this case, Professor Westlake maintained that the shares in the company, which were the property of the Government of the South African Republic, became at some time the property of the British Government. As to the time at which the British Government displaced the Transvaal Government, he agreed it was not at the time (September 1, 1900) when the annexation was proclaimed, but he did not agree that the South African Republic existed as a State at the time when the British Government negotiated the treaty of surrender; nor did he suggest any other time when it was displaced. Yet it seems obvious that to enter into an agreement with elected representatives of the burghers of their Republic, representatives acknowledged in the treaty itself to be "acting as the Government" of the Republic, estopped the British Government from contesting that they were so acting. Professor Westlake argued that "if State life had not been extinguished in the Republics, the leaders would have had no authority to extinguish it." This seems to be a contradiction of terms. Professor Westlake seems to have forgotten that the representatives of the two Republics were appointed at a regularly convened meeting of burghers, and that their powers as representatives of the two States were in due form proclaimed. They were described as "acting as the Government" because their signature of the treaty was final, and no further ratification was to be required. I cannot see any date from September 1, 1900, which it would be possible to fix upon as that at which the South African Republic as a State ceased to exist till May 31, 1902, when it voluntarily closed its own existence by treaty. Professor Westlake himself allows that a State "may have lost its capital and the larger part of its territory, but if it continues to carry on State life in any corner of its territory, it is not yet extinguished, the legal succession to it is not yet open, and there has not yet been conquest." Surely there cannot be a greater recognition of a State carrying on its State life than treating with representatives of the burghers and recording that they were "acting as the Government of the South African Republic." My friend seemed in reality to agree with me in principle, and only to differ from me on questions which might arise out of points I suggested in the course of my argument. He did not dispute that a State has a right to dispose of what belongs to it till it is succeeded by its conqueror, and that this lasts so long "as it continues to carry on State life in any corner of its territory." This was just my contention, and I fail to see why Professor Westlake said that he differed from me. On the contrary, the essential part of his article entirely endorsed my view.

## NOTE ON THE SOUTH AFRICAN RAILWAY CASE

The facts of this case, which has now been amicably settled, were briefly as follows :—

In 1885 the *Volksraad* of the South African Republic conferred on the executive authority of the Republic power to grant a concession for a railway from the Portuguese frontier to Pretoria. The concession was granted to the Netherlands South African Railway Co., a Dutch Company, in 1887, and it was confirmed and amended in 1890 and 1893, when provision was made for the nationalisation of the railway. The *concessionnaires* had practically the exclusive right of building and working railways in the territory of the Republic and a great many other advantages, among them a guarantee of dividend of the shares and of interest and redemption of the debentures. On the other hand, the *concession reserved in favour of the grantor the right at any time, upon giving a year's notice, to expropriate the railway upon certain terms* ; and a clause provided that in case of war, domestic disturbances, or danger of war, the railway should be at the absolute disposal of the Government, and that the latter should have power to wholly or partially stop the traffic on it and take all other measures it might think fit, subject to the Company being indemnified.

On the outbreak of the war the Executive of the South African Republic exercised its discretion under this latter provision, and in September 1899, after official notification to this effect, the lines were taken over by the Government of the Republic.

A proclamation issued by the High Commissioner at Capetown on March 19, 1900, gave notice that Her Majesty's Government would not recognise as valid or effectual "any alienation of property, whether of lands, railways, mines, or mining rights, within the territories of the South African Republic or Orange Free State, or any interest therein of whatever nature, or any charges or encumbrances of whatsoever description, upon any such property or interest as aforesaid, effected, declared, charged or made by the Governments of the South African Republic or Orange Free State subsequently to the date of this proclamation."

In June 1900, General Roberts occupied Pretoria. On the 1st of September following a proclamation was issued announcing the annexation of the territories of the Republic to the Queen's possessions. On the 13th of the same month the manager of the Company, Mr. Van Kretschmar, received notice that a seizure of documents at the Company's offices made by the British authorities had led to the discovery of such facts that the Commander-in-Chief had ordered the seizure and utilisation

of all the Company's property in the possession of the British forces.

On September 8, 1900, a notice was published by the British authorities stating that "every concession granted by the late South African Republic would be considered by Her Majesty's Government on its merits," and that "Her Majesty's Government reserved the right to decline to recognise or to modify any concession which might appear not to have been within the power of the Government of the late South African Republic, having regard to any conventions or agreements made between Her Majesty's Government and the Government of the late South African Republic, or to have been granted without proper legal authority or contrary to law, or the conditions of which have not been duly complied with, or which may appear to affect prejudicially the interests of the public."

In connection with this notice Commissioners were appointed to hold an inquiry on the concessions in question. They terminated their inquiry on April 19, 1901, with a report issued to the British Parliament in June of the same year.

On July 11, 1901, Lord Camperdown called attention in the House of Lords to the following finding of the Commissioners: "That the Company did initiate and organise before war was declared elaborate plans, and afterwards effectively carry them out, causing great damage, delay and loss to the Queen's armies," and inquired what fine or other punishment it was intended to inflict for these belligerent operations conducted by a private company against the Queen. Lord Lansdowne replied that it seemed to the Government that, in dealing with the holders of the securities of the Company, *a distinction would have to be drawn between those persons who had acquired an interest in the railway as bona fide investors before the outbreak of the war and those whose interest was acquired subsequently*, and the Government proposed to invite all holders to supply them with full particulars as to the extent of their holding and the date at which they acquired it.

On May 31, 1902, "terms of surrender of the Boer forces in the field" were signed. The "draft agreement as to terms of surrender" sets out that "H. E. General Lord Kitchener and H. E. Lord Milner on behalf of the British Government, and Messrs. M. T. Steyn, J. Brebner, General C. R. de Wet, General C. Olivier, and Judge J. B. M. Hertzog, acting as the Government of the Orange Free State, and Messrs. S. W. Burger, F. W. Reitz, Generals Louis Botha, S. H. Delarey, H. Lucas Meyer, and Krogh, acting as the Government of the South African Republic, on behalf of their respective burghers desirous to determine the present hostilities, *agree* on the following articles," etc.[1] It is therefore, and is rightly called in the British official records, an "agreement as to terms of surrender," and as the negotiating parties are described as acting as governments of their respective countries the agreement should, in accordance with international usage, be described as a convention or treaty. Nor can there be any question as to the representative character of the signatories who were appointed under a resolution adopted by an assembly of the burghers held at Vereeniging as set out in Lord Milner's telegram to Mr. Chamberlain of June 1, 1902.

[1] Parl. Papers, 1902, Cd. 1056, p. 12.

The British Government accepted them as duly qualified representatives, and only the burghers themselves would be entitled, under the ordinary principles of the law of representation, to dispute their credentials.

This treaty provided *inter alia* that His Majesty's Government would place at the disposal of certain commissaries a sum of £3,000,000, and would allow all notes issued under law I of 1900 of the South African Republic and all receipts given by officers in the field of the late Republic, or under their orders, to be presented to a judicial Commission which would be appointed by the Government, and, if such notes and receipts were found by this Commission to have been duly issued in return for valuable considerations, they would be received by the first named Commission as evidence of war losses suffered by the persons to whom they were originally given.

A few days later (June 14) the Directors of the Railway Company at Amsterdam wrote to the Colonial Office reminding them that no answer had yet been given to an inquiry, dated January 14, 1901, as to the fate of their property. *They now inquired whether they could not now resume the working of their lines, as they were no longer required for military purposes.*

On the 9th of the following month a reply was despatched by the Colonial Office stating that no declaration could yet be made on the subject, but that a communication would be made at a later date.

On January 10, 1903, at a meeting of German share and debenture holders a verbal communication was made through the German Ambassador in London that His Majesty's Government would pay £135 in respect of every share with reference to which satisfactory proof was given that it belonged to a private person before the outbreak of the war. Shares which were the property of the Government of the South African Republic or that of managers or agents of the Company, all such persons being considered as sharing the Company's responsibility, were excluded from the arrangement.[1] This proposal was ultimately accepted by the German shareholders.

The French shareholders, considering that as members of a joint-stock company they were not called upon to detach their interests from those of their fellow-shareholders in general, had not approached the British Government independently. But they now handed in a note to Lord Lansdowne, who replied in a note dated August 17, 1904, in which he referred to the alleged violation by the Company of their duty as neutrals through the agency of Mr. Van Kretschmar, the manager, but still gave no final answer.

The total capital of the Company was divided into 14,000 shares. Of these some 4695 shares were held in France and Holland and 8699 in Germany. These two sums together very nearly made up the 14,000. It may, therefore, be assumed that the 5713 held by the South African Republic found their way into the hands of one or other of both groups.

The business of the Company was managed by the German and Dutch shareholders. The French group was not represented in the management of the Company's affairs.

The British Government's attitude seems to have been to

[1] This distinction was not in accordance with the recommendation of the Transvaal Concessions Commission, which was that the shareholders were responsible for the belligerent acts of the servants of the Company, and were therefore not entitled to compensation for the loss of their property in the railway. As regards this latter contention, the question of the liability of a shareholder of a joint-stock company for the acts of its directors and manager seems not to have been clearly appreciated by the Transvaal Concessions Commission. They omitted to distinguish between personal and corporate liability. Corporate liability is incurred by shareholders proportionately and in accordance with their constitutive undertakings through their legally appointed representatives and for all acts within the scope of their authority. The shareholders might be held to have invested the manager or directors with authority to take an active part in the war, had they met and passed a resolution for the purpose or given countenance to such an attitude, but even then it is doubtful whether a majority could have bound the minority, and whether the liability could be held to go beyond the personal act of each individual shareholder.

The British Government's idea was, no doubt, to confiscate the shares held by the South African Republic as having become at some date during the war the property of Great Britain, but a confiscation based on an arbitrary distinction, devoid of legal foundation, might obviously become a most dangerous precedent, especially in the hands of some filibustering government.

A possible attitude of the Government might have been to hold that shares acquired from private persons differ from shares acquired from the South African Republic, and that the latter being affected by the proclamation of March 19, 1900, those who acquired them, in spite of this notice, took them at their risk and peril. This might be plausible, if it were possible to prove that the notice had been actually apprehended by any purchaser through personal service or otherwise. But, as a fact, the proclamation does not seem to have been brought to the attention of any possible purchasers. It was not issued at Pretoria, which was only reached in June, but, as I have already said, by the High Commissioner at Capetown. To argue constructive knowledge of a proclamation issued so far from the area concerned would be rather far-fetched. But apart from this, the war was still only in its earlier stages. The proclamation was probably in its origin based on an equally obscure

stand by the distinction made by Lord Lansdowne on July 11, 1901 (and repeated through the German Ambassador on January 10, 1903) between holdings acquired before and those acquired after the commencement of the war. *It was not alleged that the property in the railway passed to the British Government on the outbreak of the war.*

It is submitted that it was highly undesirable to establish any precedent which does not take into account the binding character of the principle of Article LIII. of the Peace Convention. Under this principle the British Government, setting aside all questions with individual shareholders or groups of shareholders,[1] would have taken over the railway from the Company under the expropriation clause referred to above.

notice of January 6, 1900, issued, like the proclamation of March 19, 1900, by the High Commissioner at Capetown, which ran as follows:—"Notice is hereby given that the Government of Her Majesty will not recognise as valid or effectual any forfeiture of any property situated in the territories of the South African Railway or Orange Free State, or any charges, fines or encumbrances of whatsoever description declared, levied or charged upon any such property, or any conveyance, transfer or transmission of any such property which forfeiture, charge, fine, encumbrance, conveyance, transfer, or transmission has been, or shall be, declared, charged, levied, created, made or carried into effect by the Governments of the South African Republic or of the Orange Free State subsequently to the 10th day of October 1899" (the date of the commencement of the war). The outcome of the war, however certain to British eyes, was not yet necessarily so in the view of others, and a proclamation forbidding transactions with a State which seemed still capable of maintaining its independence could not affect third parties. Such premature proclamations, however binding on the subjects of the Government issuing them, belong essentially to a class of incidents which International Law no longer recognises, such as paper blockades and fictitious occupations of territory. An invader to exercise the right of conquest must be in *de facto* possession.

Another alternative possible attitude of the Government might have been that from the date of the proclamation of annexation on September 1, 1900, the shares in the Railway Company held by the South African Republic became *ipso facto* the property of Great Britain, and that therefore no valid title could thereafter be conferred by the South African Republic.

This alternative suggests more or less the same observations as the other. The proclamation of annexation could confer no rights without actual *de facto* annexation. That the war continued for two years after the proclamation, and then was only terminated by a conditional treaty of surrender, shows how premature and fictitious such a proclamation was.

The only legal, even judicious course, for International Law is often only expediency in a comprehensive sense, was that the British Government, having acknowledged the existence of the Government of the South African Republic down to May 31, 1902, when the treaty of surrender was negotiated, should have ceased to deny its existence at any time before that date, though for political purposes the British military commander professed to deny it. So long as the Government of the South African Republic existed, it could dispose of what belonged to it. Nobody will dispute that the government which displaces another government assumes its obligations. Nor has any distinction ever been made between obligations incurred for civil or for military purposes. Purchases even of war material for use against the conquering forces are debts properly incurred, and it is immaterial whether the purchases were made before or in the course of the war. The only criterion is that the transactions be *bona fide*. If the South African Republic paid off any part of its debts in shares of the Railway Company, it only parted with property which it had a right to part with. If the shares were annulled, the right of those who received them to be paid otherwise, in accordance with the terms of their contract, by the successor of the South African Republic, would have revived.

In his International Law, Peace (Cambridge, 1904), Professor Westlake gives a very clear statement of the principles of International Law governing such cases. It may be summed up as follows:

(1) The purely private rights of individuals, whether of property or obligation, are untouched by the change of Government.

(2) The acquiring State succeeds to the entire position of the displaced State as owner of the assets, or what is called the active succession (p. 74).

(3) The acquiring State is affected by what is called the passive succession; in other words, it steps into the civil liabilities of the displaced State, though, of course, in the case of a partial cession only into those of them which exist in connection with the ceded territory (p. 75).

The continued existence of concessions must depend on their not being in conflict with the public law and policy of the annexing State; but if they are cancelled the persons interested will be entitled to such compensation as that State grants on cancelling a concession of its own (p. 83).

A transferee or annexing State takes the territory as it stands—that is, subject to all the rights which have been impressed on it in favour of third parties by the treaties which have disposed about it; and by virtue of this possibility of looking only at the rights as they stand, without going behind them to the documents of title, dispositive treaties may be represented as not being an exception to the general rule (p. 61).

[1] Did not the guarantee of dividend and interest by the Transvaal Government bind that government's successor, irrespectively of the cause of non-payment by the Company and especially where the non-payment was due to the action of that government's successor? Comp. *Cook* v. *Sprigg* [1899], A. C. 572, judgment of Judicial Committee delivered by the Lord Chancellor:—

"It is no answer to say that by the ordinary principles of international law private property is respected by the sovereign which accepts the cession and assumes the duties and legal obligations of the former sovereign with respect to such private property within the ceded territory. All that can be properly meant by such a proposition is that *according to the well-understood rules of international law a change of sovereignty by cession ought not to affect private property, but no municipal tribunal has authority to enforce such an obligation.* And if there is either an express or a well-understood bargain between the ceding potentate and the government to which the cession is made that private property shall be respected, that is only a bargain which can be enforced by sovereign against sovereign in the ordinary course of diplomatic pressure." See note on this case by Editor (Sir F. Pollock), Law Quarterly Review, Jan. 1900, p. 1, dissenting from the view of the Judicial Committee that "no municipal tribunal has authority to enforce such an obligation.

# V

# FURTHER CODIFICATION OF THE LAW AND CUSTOMS OF WAR GENERALLY

THE Convention on the Laws and Customs of War states in the Preamble that the object of the Contracting Powers had been to revise and give precision to the existing laws and customs of war; that it had not been possible to deal with all the matters which arise in practice; and that "*until a more complete code of such laws and customs had been adopted*," the rules followed among civilised nations would continue to be applied by the signatories.

The Russian Government, in the invitation[1] to the second Hague Conference, includes among the matters which come under the designation of "law and customs of war," rules relating to declarations of war, the subjects of the "declarations" adopted in 1899 on the launching of projectiles and explosives from balloons, the use of projectiles for diffusing asphyxiating or deleterious gases, and of *dum-dum* bullets, the bombardment of towns, etc., floating mines, and transformation of commercial into war ships.

[1] See pp 1 and 6 *et seq.*

As regards the bombardment of open towns, Article XXV of The Hague Regulations respecting the Laws and Customs of War prohibits the "attack or bombardment of towns, villages, habitations, or buildings which are not defended." The Conference also adopted a *vœu*[2] that "the proposal to settle the question of the bombardment of ports, towns, and villages by a naval force may be referred to a subsequent Conference for consideration." The British delegates abstained from voting for it on the ground that the British Government on a previous occasion (Brussels Conference of 1874) had made the exclusion of naval questions a condition of their taking part in an International Conference; they added that this abstention was not to be construed as in any way touching the merits of the question.

[2] See p. 254.

The bombardment of open towns by naval forces was considered by the Institute of International Law at the Cambridge meeting in 1895, and at that at Venice in 1896. At the latter session a number of rules were adopted which might very well serve as a basis for discussion. They were as follows:

Art. I.—There is no difference between the rules of war applying to bombardment by military forces on land and those applicable to bombardment by naval forces.

Art. II.—Consequently the general principles set out in Article XXXII.

of the Manual of the Institute[1]—*i.e.* it is forbidden (*a*) to destroy public or private property, if such destruction is not commanded by the imperative necessity of war; (*b*) to attack and bombard localities which are not defended, apply also to naval forces.

Art. III.—The rules set out in Articles XXXIII. and XXXIV.[2] of the Manual are equally applicable to naval bombardments.

Art. IV.—In virtue of the foregoing principles, the bombardment by a naval force of an open town, *i.e.*, one not defended by fortifications or other means of attack or of resistance for immediate defence, or by detached forts situated in proximity to it, for example, at the maximum distance of from 4 to 10 kilometres, is inadmissible, except in the following cases: (1) In order to obtain by means of requisitions or of contributions what is necessary for the fleet. Nevertheless, such requisitions and contributions must remain within the bounds prescribed by Articles LVI. and LVIII.[3] of the Manual of the Institute. (2) In order to destroy dockyards, military establishments, depôts of munitions of war, or vessels of war found in a port.—Moreover, an open town which is defended against the entrance of troops or of disembarked marines may be bombarded in order to protect the landing of soldiers and of marines if the open town attempts to prevent it, and as an auxiliary measure of war in order to facilitate an assault made by the troops and disembarked marines, if the town defends itself.—Bombardments whose sole object is to exact a ransom, and, with greater reason, those destined only to induce the submission of the country by the destruction, without other motive, of peaceable inhabitants or their property, are specially forbidden.

Art. V.—An open town shall not be exposed to bombardment by the sole fact: (1) That it is the capital of a State or the seat of government (but, naturally, these circumstances give it no guarantee against bombardment; (2) that it is being occupied by troops, or that it is usually garrisoned by troops of various arms, intended to join the army in time of war.[4]

Of the other matters referred to by the Russian Government, Declarations of War,[5] Floating Mines,[6] and the Transformation of Merchant into War ships[7] alone are specially discussed in this volume, the rest involving technical questions beyond the range of law and diplomacy.

In connection with the Convention for the adaptation to Maritime War of the principles of the Geneva Convention of August 22, 1864, the following *vœu* was adopted by The Hague Conference (1899):

The Conference, taking into consideration the preliminary steps taken by the Government of the Swiss Confederation for the revision of the Geneva Convention, expresses the wish that a special conference should be held shortly for the purpose of revising the said Convention.

This Conference was held at Geneva in July 1906, when a full revised Convention was adopted which now takes the place of that of 1864. The full text of it will be found among the Appendices.[8]

Another International Conference held in December 1904 dealt with the status of Hospital Ships in time of war.[9] Great Britain did not take part in this Conference. Her abstention, however, was not owing to any objection of principle, but purely to considerations of domestic legislation which are explained in a special note on the work of the Conference.[10]

[1] See Ann. de l'Institut for 1880.

[2] The corresponding articles in The Hague Regulations on War are Articles XXVI. and XXVII. See p. 237.

[3] The corresponding article to these in The Hague Regulations on War is Article LII. See p. 240.

[4] See on this subject and in connection with these rules chap. v. in Professor T. E. Holland's *Studies in International Law* (1898). Professor Holland as *rapporteur* of the Committee of the Institute on the subject drew up the rules, which with a few modifications were adopted unanimously.

[5] See p. 53.

[6] See p. 59.

[7] See p. 204.

[8] See text, p. 261. The Swiss Government deserves all praise for the persistency of its endeavours to bring about the revision of the Geneva Convention of 1864 in the face of a most discouraging indifference on the part of most other States.

Very soon after its adoption it was thought desirable to revise and complete it. And after the war of 1866 a diplomatic conference was held at Geneva (October 5, 1868) for this purpose. This Conference resulted in a project of fourteen additional articles, five of which related to war on land and nine to naval warfare. The additional articles were not, however, ratified by all States, and never became operative. The International Conference of 1874 at Brussels for the codification of the law and customs of war took up the Geneva Convention and again drew up a number of articles which were submitted to the interested Governments. But as in the case of the additional articles of 1868, no effect was ever given to them.

At length in deference to the above *vœu* the Swiss Government in 1901 sounded the different Governments as to whether the time had now come to call a special conference; but the replies received from some of the Governments not giving much encouragement, the matter was dropped for the time being. By a circular note of February 17, 1903, however, the Swiss Government invited all the States participating in the Geneva Convention to each send a representative to a Conference to be held at Geneva on September 14, 1903. Some Governments not having accepted the invitation in time, the Conference was postponed, but at the beginning of 1904, there being no apparent obstacle, the Swiss Government again invited the Signatory States of the Geneva Convention to send delegates to a Conference to be opened on May 16, 1604. The war which shortly afterwards broke out between Russia and Japan entailed still again an adjournment. In March 10, 1506, a fresh invitation for June 11 was sent out.

Out of the forty-one Governments interested, thirty-five accepted and six States (Turkey, Salvador, Bolivia, Venezuela, Nicaragua, and Columbia) abstained. But this time the Conference did at length take place.

[9] See text of the Convention, p. 257.

[10] See p. 198.

## VI

# DECLARATIONS OF WAR

"An ardent controversy has grown out of the recent war on the question of declarations of war, and accusations, if not of perfidiousness, at any rate of irregularities contrary to international law, have been formulated against one of the belligerents. These accusations have been made not only by its adversary, but also by jurists belonging to nations having no interest in the quarrel. The accused has found numerous and vigorous defenders, and has also defended itself through the medium of its own leading jurists."

These are the opening words of an interesting report on the subject of declarations of war, drawn up by Professor Albéric Rolin, of Ghent, President of the Institute of International Law. Professor Rolin, after fortifying himself with the opinions of a number of the leading jurists of Europe, submitted to the Institute of International Law the following principles as a basis of discussion:—

(1) It is in accordance with the duty of loyalty among nations in their relations with each other and in their common interest, that hostilities should not be commenced without clear and precise notice beforehand.

(2) This notice may take the form of an express declaration of war, either pure and simple, or be conditional in the form of an ultimatum duly notified to the adversary.

(3) The declaration of war should also be notified without delay to neutral States for their information and guidance.

(4) Hostilities should not begin till after expiry of a certain time, running from the date on which the notification of the declaration of war reached the Government of the State to which it is addressed.

(5) The time should be seven days for war on land and a fortnight for maritime war.

These principles, from an ethical point of view, may be valuable as an expression of what is desirable. It is not, however, probable that any States would agree to their adoption.

Professor Rolin, while admitting that in the present state of international law an express declaration of war is not necessary, adds that in default of such an express declaration "there must be some equivalent act clearly indicating the intention to open hostilities." This as well as the assertion in the first clause of the above rules, that it is in the common interest that notice should be made compulsory, seems to be controverted by the practice of a century.

Some years ago, in connection with the project of constructing a tunnel under the British Channel, Lieutenant-Colonel (now Major-General) J. F. Maurice was instructed by the Adjutant-General to draw up a paper on "cases in which hostilities had occurred between civilised Powers prior to declaration or warning of war." The results of the inquiry, which were published in 1883 as an official book, entitled "Hostilities without Declaration of War," showed that there was no established usage on the subject, and that during 171 years (from 1700 to 1870 inclusive), less than ten cases had occurred in which an actual declaration of war, prior to hostilities, had been given.

Historians sometimes use the expression "war was declared" as a convenient mode of stating the fact that war was commenced. In cases cited by Colonel Maurice some specific act, such as the crossing of the Ticino, the refusal of a governor of a fortress to allow it to be approached, the violation of territory, a neutral Power permitting troops to pass through its territory, etc. etc., has been treated by historians as a "declaration of war."[1]

[1] Maurice, *Hostilities*, etc., p. 9.

That most wars in modern times had been commenced without any declaration would, of course, not be material to the issue, if the existing practice involved a cruelty as glaring, say, as the use of floating mines to blow up unsuspecting vessels outside the notified area of blockade.[2] As a fact, however, all the more important recent wars, except the Russo-Japanese war, have been preceded by deliberate notice, namely, the Franco-German, in which the French Government handed through its *Chargé d'Affaires* a formal declaration to the Prussian Foreign Minister,[3] —that of 1877, when the Russian Government handed a similar declaration to the Turkish *Chargé d'Affaires* at St. Petersburg, and the Hispano-American and Anglo-Boer wars which were preceded by ultimatums.[4]

[2] Mr. Hall views any declaration as mere supererogation. "Any sort of previous declaration," he holds, "is an empty formality unless an enemy must be given time and opportunity to put himself in a state of defence, and it is needless to say that no one asserts such quixotism to be obligatory" (*Int. Law*, 4th ed. (1895) p. 391).

[3] According to the late M. Rolin-Jaequemyns, France renewed a usage which seemed to have been abandoned in making a declaration of war (*Rev. du droit internat.*, 1885).

[4] An ultimatum setting out conditions, compliance with which is required within a specified time, is a conditional declaration of war which becomes absolute in case of non-compliance. In the case of the Hispano-American war, the United States in their note of April 20, 1898, gave Spain three days to agree to the withdrawal of all land and sea forces from Cuba. On the evening of the 22nd they began hostilities by seizing several Spanish vessels.

As regards the mode in which, in February 1904, Japan began the war against Russia, though there was no express prior declaration of war, there were all the symptoms of approaching war. As early as December 1903, public opinion was prepared for its outbreak.[1] Throughout January, Japan manifested her impatience in unmistakable terms. On February 5, Baron Komura, the Japanese Minister of Foreign Affairs, instructed the Japanese Minister at St. Petersburg to give formal notice of the rupture of the pending negotiations, and intimated that the Japanese Government would "take such independent action as it might consider best to consolidate and defend its threatened position, as well as protect Japan's vested rights and legitimate interests."[2] This intimation was accompanied by a signed note[3] announcing that the whole Japanese Legation would leave St. Petersburg on February 10. The terms of the intimation thus given seemed in themselves a warning[4] sufficient to put the Government to whom they were given at least on their guard.

In practice, however, misunderstandings have occurred again and again from manifestations of this kind. Patience at the critical moment, it is true, might possibly have averted the Russo-Japanese war;[5] while, on the other hand, it is quite conceivable that delay in the hands of a Government, to whom time was a gain, might have placed the co-negotiating party in a less favourable position.

Precedents are seldom of much use for action in emergencies, but they have a certain value from the point of view of what can be avoided. Thus misconceptions have arisen more than once between statesmen of different countries as to the significance of communications which have passed between them. "The extreme anxiety which is shown everywhere in the history of modern diplomacy to avoid coarseness or bluntness of expression, the desire not to provoke, which makes it a point of honour delicately to hint at possible or intended war, and combined with this the eager wish, even at the last moment, to arrange terms of reconciliation, have led in several instances to very

[1] Thus, to my certain knowledge, war correspondents of two leading London newspapers passed in the course of December through New York, where I was staying at the time, on their way to the Far East in anticipation of hostilities breaking out from day to day.

[2] Documents diplomatiques, Correspondance concernant les négociations entre le Japon et la Russie, 1903–1904.

[3] The note was as follows:

"The undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of Japan, in accordance with the instructions of his Government, has the honour to inform the Minister of Foreign Affairs of His Majesty the Emperor of all the Russias, that the Imperial Government of Japan, having exhausted without result all means of conciliation, in view of preventing any cause of future complications with the Imperial Government of Russia, and seeing that its just representations and moderate and disinterested proposals in the interest of a firm and durable peace in the Far East do not receive the consideration which is due to them, has resolved to break off its diplomatic relations with the Imperial Government of Russia, which, for the above-named reason, have no further value. In further execution of the orders of his Government, the undersigned has also the honour of informing his Excellency Count Lamsdorff that it is his intention to leave St. Petersburg, together with all the members of the Imperial Legation, on the 10th inst."

A similar question arôse in connection with the opening of hostilities in the Chino-Japanese war.

Professor Nagao Ariga, who was attached to the invading army as its chief legal adviser, in his book, *La Guerre sino-japonaise au point de vue du droit international* (1896), makes the following remarks on the charge made against the Japanese Government of having begun hostilities before giving notice of their intentions: "A question suggests itself, Was it regular that collisions between the military and naval forces of the parties should take place before any declaration of war had been made by the belligerents on either side? This seems to me a question which can be settled without much discussion. It is a recognised truth that a notification on the part of either belligerent is not a necessary preliminary to war. The Sino-Japanese war is one of the numerous examples of wars which have begun without notification and are cited in works on international law. What, then, was really the act which was considered by Japan to be the beginning of the Sino-Japanese war? Was it the dealings of the Chinese with regard to the Japanese, which preceded the sinking of the *Kow-Shing*? Or was it that sinking itself? I am of opinion that pacific Sino-Japanese relations were broken from the time when, upon the refusal of China to accept the ultimatum submitted to her, Japan notified the Government of Pekin that she would act alone in view of introducing reforms in Corea, and that whatever happened in the future, all the responsibility would fall on China. The hostilities began the day on which China sent off her men, and Japan, on her side, sent off her war vessels, viz. on the 23rd of July, a date which preceded by a few days the sinking of the *Kow-Shing*. It seems to me useless to enlarge any further on that point. International Law has no fixed rules determining the acts which can give rise to a war. Everything, of course, must depend upon circumstances. We must, therefore, allow each State to judge for itself. It may happen that a country, Japan, for instance, may regard as causes of war, acts which would not be regarded as such by the other Powers, and *vice versâ*. This is not a matter which can be definitely settled, and must therefore be left to the appreciation of each State. As regards the *Kow-Shing* incident, the latter vessel was sunk on July 25 by the Japanese war-vessel *Naniwa*. It was the property of Jardine & Matheson, an English company, chartered by China for the transport of Chinese troops to Corea, and had no less than 2000 militiamen on board. Our opinion is that whether the incident is considered to have taken place before the opening of hostilities or after, it must be looked upon as an act of pure self-defence, and therefore regular. At the very moment when the *Naniwa* met the *Kow-Shing*, the soldiers on board the latter were manifesting their intention of fighting against the rights and interests of Japan. In these circumstances Japan could certainly not allow them either to proceed further, or return to their own country. The only course open to Japan was to conduct them to a Japanese port and detain them there as prisoners. This they were summoned to do by the commander of the *Naniwa*, and, had they obeyed, no act of hostility would have been committed against them; but, as they refused to obey, it was a just case of self-defence to sink the ship. Nor in such circumstances was Japan bound to take into account the nationality of the vessel's flag, which was English. Since the captain of the vessel would not take the responsibility of delivering the Chinese soldiers over to the Japanese, the latter had the right to sink the ship, subject to indemnification

curious results."[1] In some cases "what has been on one side intended as an ultimatum, to be followed under certain contingencies and after a certain lapse of time by a declaration of war, has been, according to the strength or weakness of the Power receiving it, treated sometimes as an actual declaration of war, and thereupon at once acted upon; sometimes it has been regarded as only a rather more than ordinarily threatening communication, suggesting a more active stage of diplomacy; so that in either event a virtually complete surprise has been effected when hostilities have actually commenced. Of all these the most interesting and most curious is Lord Palmerston's misunderstanding of the withdrawal of the French Ambassador from London in 1850. It is abundantly clear that if ever the withdrawal of an ambassador was used as the modern equivalent of a declaration of war, or warning of war, to be followed by acts of hostility without further notice, that withdrawal of the French Ambassador was so regarded by the withdrawing Cabinet, and so understood by the French Senate and House of Representatives, to which it was announced. Yet in the most formal manner Lord Palmerston, who had had read to him the despatch recalling the Ambassador, declared that the recall was a purely friendly one. Now certainly, whatever may be the verdict of history as to the character and ability of Lord Palmerston, it will not be possible to declare that he was unversed in diplomatic usage, or that a misunderstanding which occurred when he was at the Foreign Office, in 1850, may not occur to-morrow, no matter who holds the seals of the Foreign Office."[2]

On the other hand, in 1871 the recall of a Minister Plenipotentiary was interpreted in the opposite sense from that above, and again in a way different from that intended. "Certain passages in the President's Message, coupled with the abrupt recall of Mr. Motley, the United States Minister in England, had aroused fears in the minds of some who earnestly desired the maintenance of pacific relations between the Old and the New Country, that General Grant had resolved on presenting a categorical demand to the British Government, which, if not complied with, would at once be followed by the outbreak of hostilities. . . . When, however, on a requisition from the Senate at Washington, the documents relative to Mr. Motley's recall were brought to view, it appeared that it was because that Minister had too much identified himself with the policy of Sumner" (that is, with a course too violently hostile to England, and almost threatening war),

of the owner. Of all the rights belonging to a State, under international law, that of legitimate self-defence or national conservation is the first and most sacred.

"One last observation as regards the *Kow-Shing* incident. The question of indemnity incurred through the *Kow-Shing* incident was simply a civil matter, and therefore was quite outside public international law. Messrs. Jardine & Matheson, in accordance with the views of the British Government, as a fact, considered the sinking of the *Kow-Shing* as an act which took place after the opening of hostilities, and did not claim on that ground any reparation from Japan" (p. 16 *et seq.*).

See also Prof. T. E. Holland's *Studies in International Law* (1898), p. 126 *et seq.*, whose view of the incident is not materially different from Prof. Ariga's.

[4] It was only on February 10, two days after the Japanese began hostilities, that the Japanese Government issued a declaration of war. The translation of it into English was communicated by the Japanese Legation in London to the London morning papers the next day, and published by them on February 12. This Japanese Declaration of War was as follows:—

"We, by the Grace of Heaven, the Emperor of Japan, seated on the Throne occupied by the same dynasty from time immemorial, do hereby make proclamation to all our loyal and brave subjects as follows:—

"We hereby declare war against Russia, and we command our army and navy to carry on hostilities against her in obedience to duty and with all their strength, and we also command all our competent authorities to make every effort in pursuance of their duties and in accordance with their powers to attain the national aim, with all the means within the limits of the law of nations.

"We have always deemed it essential to international relations, and made it our constant aim to promote the pacific progress of our Empire in civilisation, to strengthen our friendly ties with other States, and to establish a state of things which would maintain enduring peace in the Extreme East, and assure the future security of our Dominion without injury to the rights and interests of other Powers.

"Our competent authorities have also performed their duties in obedience to our will, so that our relations with all Powers have been steadily growing in cordiality.

"It was thus entirely against our expectation that we have unhappily come to open hostilities against Russia.

"The integrity of Korea is a matter of gravest concern to this Empire, not only because of our traditional relations with that country, but because the separate existence of Korea is essential to the safety of our realm.

"Nevertheless, Russia, in disregard of her solemn treaty pledges to China and of her repeated assurances to other Powers, is still in occupation of Manchuria, and has consolidated and strengthened her hold upon those provinces, and is bent upon their final annexation.

"And since the absorption of Manchuria by Russia would render it impossible to maintain the integrity of China and would, in addition, compel the abandonment of all hope for peace in the Extreme East, we determined, in those circumstances, to settle the question by negotiations and to secure thereby a permanent peace.

"With that object in view our competent authorities by our order made proposals to Russia, and frequent conferences were held during the last six months.

"Russia, however, never met such proposals in a spirit of conciliation, but by her wanton delays put off the settlement of the serious question, and by ostensibly advocating peace on the one hand, while she was on the other extending her naval and military preparations, sought to accomplish her own selfish designs.

"We cannot in the least admit that Russia had from the first any serious or genuine desire for peace. She has rejected the proposals of our Government. The safety of Korea is in danger. The interests of our Empire are menaced. The guarantees for the future which we have failed to secure by peaceful negotiations can now only be obtained by an appeal to arms.

"It is our earnest wish that by the loyalty and valour of our faithful subjects peace may soon be permanently restored and the glory of our Empire preserved."

[5] A Reuter's telegram from St. Petersburg, dated February 10, reported:—

"In Imperial Court circles it is stated that the Emperor, on learning of the decision of the Japanese Government to break off diplomatic relations with Russia, said that "he saw in that act of folly an insolent and very offensive provocation to Russia, given at the very moment when she was doing her utmost to arrange a pacific settlement of the misunderstandings with Japan.

[1] Maurice, *Hostilities*, etc., p. 6.

[2] Maurice, *Hostilities*, etc., p. 6.

"not because he was too yielding to the claims of England." "Mr. Fish said it was expected that Mr. Motley would have represented the views of his Government, but that before he left America it became apparent that upon a question of controlling interest at that moment, occupying the attention of the thoughtful and prudent, to restrain the passions which had been excited by eloquent declamation and powerful rhetoric, Mr. Motley accepted the views upon which popular excitement had been stimulated and brought to the verge of dangerous irritation, rather than those which the President deemed to be sound, and based upon the true principles of public law." Mr. Fish went on to point out that in the teeth of his instructions Mr. Motley had talked of the "gravity of the occasion," of the "burning questions of grievance." "More than once he was said to have gone to the very verge of admissible diplomatic suggestion in alluding, without any authority for so doing, to the contingencies which would depend on negotiations concerning such vital questions." Thus when an ambassador was recalled because he was too threatening and warlike, his recall was supposed to be an act threatening war, and it tended to produce that very state of feeling between the two countries which has often led to sudden war.[1]

[1] *Annual Register for 1871*, p. 283; and Maurice, *Hostilities*, etc., p. 79.

Nothing more conclusively shows the danger of trusting to constructive notice of war than the consequences of President Cleveland's famous Message about Venezuela of December 17, 1895, in which he proposed to Congress to appoint a Commission to determine the boundary between British territory and Venezuela, adding that it would be the duty of the United States "to resist by every means in its power, as a wilful aggression upon its rights and interests, the appropriation by Great Britain of any lands, or the exercise of governmental jurisdiction over any territory, which, after investigation, the United States had determined of right belonged to Venezuela." President Cleveland's proposal was accepted by Congress. If any other Power but the United States had been concerned, there is little doubt that such intervention would have exposed the two countries to a very dangerous state of feeling; for although Great Britain did not pick up the glove thus thrown down, the whole world was deeply impressed. In three days the value of American securities is estimated to have fallen by £100,000,000, and a panic in Wall Street on 20th December

obliged the President to issue a fresh Message in the afternoon to reassure the public.[1]

[1] An instance of with how little warning war may be precipitated when Governments wish to quarrel. is the state of neutral inexpectancy which preceded the outbreak of the Franco-German war. Thus, on July 11, 1870, Lord Granville stated in the House of Lords that on receiving the seals of office a few days earlier he had had an official communication from the Under-Secretary, Mr. Hammond, at the Foreign Office, that with the exception of a capture of Englishmen by Greek brigands, he had never, during his long experience, known so great a lull in foreign affairs, and that he was not aware of any important question which would have to be dealt with. The same evening he received a telegram informing him of the choice which had been made by the Provisional Government of Spain of Prince Leopold of Hohenzollern, and of his acceptacce of the offer. This had led to "strong language," used at once by the French Government to the Prussian, and the existence of "a strong and excited public opinion in France." Three days afterwards the Benedetti incident occurred, and on the 19th of July war was formally declared. The whole period, therefore, between Mr. Hammond's statement and the incident which so raised French passions that war from that moment became inevitable, was two hours, and the whole period between Lord Granville's statement and the formal declaration of war was eight days.—See Maurice, *Hostilities*, etc., p. xii.

It seems difficult, in the face of so many difficulties, to lay down any rules capable of contractual adoption. It can, nevertheless, do nothing but good to reiterate the principle that the rules of conduct men are expected to observe in their business relations with each other should be observed in the business relations of nation with nation. This is no doubt all that is meant by the first clause of Prof. Rolin's rules set out above, which, with a slight modification, was accepted by the Institute at the Ghent meeting (Sept. 20, 1906). More than this is probably impossible.

The Rules adopted by the Institute at the Ghent meeting, in their entirety, however, are as follow:—

(1) It is in accordance with the requirements of International Law, and with the spirit of fairness (*loyauté*) which nations owe one another in their mutual relations, as well as in the common interest of all States, that hostilities should not commence without previous and unequivocal notice.

(2) This notice may take the form of a declaration of war, pure and simple, or that of an ultimatum, duly notified to the adversary by the State about to commence war.

(3) Hostilities should not begin till after the expiry of a delay sufficient to ensure that the rule of previous and unequivocal notice may not be considered as eluded.

It seems worthy of consideration whether the present practice of recalling diplomatic missions in acute cases of international difficulty is at all justifiable until hostilities have actually begun, and there is no further hope of avoiding war. The contractual abolition of the practice would remove one of the chief dangers of misunderstanding at critical moments, and, by prolonging negotiations under even limited treaties of arbitration like those based on the Anglo-French model, would add to the effectiveness of such treaties for the preservation of peace without altering their terms.[2]

[2] See a suggested *vœu* on the subject, p. 184.

# VII

# FLOATING MINES AND MINE FIELDS

SEVERAL questions are involved in the employment of floating mines. It has to be considered whether (1) it is permissible to lay such mines on the High Sea beyond the customary bounds of territorial waters, or (2) even within the bounds of territorial waters; and, in the alternative, if permissible, (3) whether the practice is only permissible for the purpose of defence, and even if for that.

During the blockade of Port Arthur, the Russians laid mines in all parts of the sea adjacent to that port. The Japanese allege that from the beginning to the end of the siege they removed 395 Russian mines. The removal continued after the siege, so that the total number removed they estimate to have much exceeded this number. In an excellent article, dated November 24, 1905, published in the *Times* of December 27, the able Tokyo correspondent of that paper remarked that "this chapter of history would not have retained a prominent place in general recollection, had it not been vividly illustrated from time to time by shocking disasters to merchant steamers, which, while navigating routes comparatively remote from the scene of the combat, struck errant mines, and were sent to the bottom." The Russians were not alone the offenders. The Japanese made almost equally extensive use of such mines, as has been learnt from a document compiled at the Japanese Hydrographers' Office in answer to an application from the Russian headquarter staff for information as to the locality of any mines placed by the Japanese in the neighbourhood of Vladivostok. The Japanese Admiralty replied, says the same correspondent, by a detailed statement showing that two mine-laying operations had been carried out by the Japanese in Vladivostok waters—the one in April, 1904, to render impassable the entrance and exit through the straits which must be passed to reach the port; the other, about a year later, when the Baltic Fleet had arrived in Far Eastern Waters. In this case 715 mines were laid "right across Peter the Great Bay, from Askold Island to Korsakoff Island, a

distance of forty miles." These figures show that there must have been a mine at about every 100 yards. "In spite of this great plexus of destructive engines," communications with Vladivostok continued undisturbed during the period of eight months from April 15, 1905, when the Askold-Korsakoff line was laid, to November 9 of the same year, when the Japanese Admiralty replied to the Russian inquiry."

The danger involved for neutrals in these mines, however, has been amply shown by the destruction of four inoffensive merchantmen in the neighbourhood of Port Arthur. It is no answer, as regards the danger to neutrals, to say no neutral ships—nor indeed any ships at all—were injured by the Japanese mines on the high sea outside Vladivostok. The danger was there, and it was increased by derelict mines wandering beyond the dangerous area. Some dozen it seems drifted as far south as the Oki Islands, over 1000 miles away from where they were laid.[1]

As regards the questions set out above :—

(1) There is no doubt as to the illegality of laying mines beyond the limits of territorial waters. In pretty general (but not universal) practice a zone of three miles along the coast-line is recognized as being under the sovereignty of the adjacent State. Bays not exceeding ten miles from headland to headland are assimilated to estuaries of the same width, the coast-line from which the zone is calculated passing from such headland to headland. Beyond this zone is the High Sea, which is the common property of mankind, and belligerents have no right to interfere with its safety beyond exercising the rights of visit and search and effective blockade, which are specific and well-ascertained rights, not capable of extension to cover the laying of mines.[2]

(2) As regards Territorial Waters, a right of inoffensive passage is universally recognised in favour of all navigators without distinction. Under the existing practice of Europeans, this right can only be abridged by the exigencies of the exercise of the belligerent right of effective blockade on the one side and the general exigencies of defence on the other. In 1894 the *Institute of International Law* laid down the rules governing the

[1] The *Daily Mail* of March 13, 1906, contained the following paragraph, dated

"OSTEND, *March* 11.

"Some consternation was caused here on Thursday, when the Dover mail boat reported a floating mine off the coast. A tug was sent out to remove the mine, which was found to have drifted from the defences at Dunkirk. A French torpedo-boat arrived on Friday, and after paying £60 as salvage, took the mine away."

On October 15, 1906, the *Standard* announced that sixteen floating mines had got adrift in the Solent. Ten of them had been recovered, but the other six had not been found. The naval authorities at Portsmouth had issued a statement to the effect that so long as the mines remained in deep water there was no danger, but should they be carried inshore they would be a serious menace to small craft.

From Vladivostok a telegram of October 21, 1906, to the *Times* announced that the Russian steamer Variag, when leaving the harbour the day before, had struck a torpedo and sank immediately. Two hundred passengers perished, only one being rescued.

The *Morning Leader* announced, on October 24, 1906, from Copenhagen, that the German Government had notified the Danish Baltic Authorities that a floating mine had become detached during the recent manoeuvres, and could not be found.

These are only a few of many announcements in the daily newspapers showing the danger to navigation of floating mines.

[2] See chapter on Territorial Waters, p. 109 *et seq.*

See Professor von Martitz' interesting paper on "Mines in Naval War," read at the Berlin meeting of the International Law Association (Oct. 1906), in which he claims for belligerents the right to lay down mines as far seawards as ten nautical miles (cannon-range) from the coast, cannon-range, in his opinion, still determining the width of the Territorial Waters' zone, subject to any contractual arrangement fixing it otherwise.

right to interfere with the inoffensive user of territorial waters in the following terms:—

"Art. V. All ships without distinction have the right of inoffensive passage through territorial waters, subject to the belligerent right to regulate, and, for purposes of defence, to bar the passage through the said waters for every ship, and, subject to the right of neutrals, to regulate the passage through the said waters for ships of war of all nationalities.

"Art. VII. Ships passing through territorial waters must conform to the special rules laid down by the adjacent State, in the interest and for the security of navigation and for the police of the sea."[1]

[1] These rules in 1805 were also adopted by the International Law Association.

(3) It follows from the right of self-preservation that a State may take measures for purposes of defence which would not be equally justified if taken for purposes of attack. Certain acts, however, are absolutely forbidden to both belligerents. The use of floating mines has not yet been added to these: and when the question of their permissibility arises, it will have to be considered (*a*) whether floating mines can be laid down in any part of the territorial waters of a belligerent State from which neutral ships are not either *de facto* or by other effective notice excluded; (*b*) whether only certain kinds of floating mines, which are not liable to become detached and to explode on merely coming into contact with any vessel, may be used; (*c*) whether for purposes of attack or blockade they may be used at all.

The question of whether a belligerent State may on the outbreak of war suspend the user of its territorial waters does not arise, the defending State being sole judge of what is necessary for its safety.

As regards the question of humanity, the Hague Conference of 1899 laid down a number of rules, and reserved others for later examination, with a view to attenuating the horrors of war. No horror, yet devised, seems quite equal to that of the destruction of a ship by a floating mine, especially at a distance from the seat of hostilities, as when the mine has broken from its moorings and drifted to a situation where its existence is quite unwarranted. The same indignation which was shown for dumdum bullets and shells giving out asphyxiating gases would also be justified even within the war area against floating mines, which during the Russo-Japanese war destroyed as many as nine vessels, including three battleships, with all the attendant horrors of being blown up without the slightest warning or other possible preparation, or means of life

being saved by the enemy, who, under the existing laws of war, is bound to take all possible care to preserve the lives of those who have been disabled, without distinction between friends and foes.

The subject was dealt with by the Institute of International Law at their meeting at Ghent in September 1906, when the following rules were adopted [1]:—

(Provisional Text.)

I. The placing of fixed or floating mines on the high sea is prohibited.

II. Belligerents may place mines in their own territorial waters or in those of the enemy, with the exception of floating or fixed mines, liable, by their displacement, to be a danger to navigation outside the belligerent waters.

III. (1) The above also applies to neutral States placing in their waters any engines to prevent the violation of their neutrality.

(2) But neutral States may not place such mines in the passage of straits leading into the open sea.

IV. The obligation of notification is incumbent on the belligerent State as well as on the neutral State.

V. Violation of any of the above rules entails the responsibility of the State which commits such violation.

[1] See report to the Institute on the subject by Prof. Kebedgy of Bern *Proceedings*, 1906.

# VIII

# IMMUNITY OF PRIVATE PROPERTY AT SEA FROM CAPTURE

At The Hague Conference, 1899, the United States delegates, in accordance with specific instructions from their Government, presented the following proposition:—

"The private property of all citizens or subjects of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure on the high seas or elsewhere by the armed vessels or the military forces of any of the said signatory Powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said Powers."

This proposition represents a traditional policy of the United States. As long ago as 1783, Benjamin Franklin, in the course of treaty negotiations with Great Britain, expressed himself as follows:—

"It is for the interest of humanity in general that the occasions of war and the inducements to it should be diminished. If rapine is abolished, one of the encouragements to war is taken away, and peace therefore more likely to continue and be lasting. The practice of robbing merchants on the high seas, a remnant of the ancient piracy, though it may be accidentally beneficial to particular persons, is far from being profitable to all engaged in it, or to the nation that authorises it."

He also suggested the following article for the treaty then under discussion:—

"That if war shall arise between Great Britain and the United States, which God forbid . . . all merchants or traders with their unarmed vessels employed in commerce, exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of life more easy to obtain, and more general, shall be allowed to pass freely unmolested; and that neither of the Powers shall grant or issue any commission to any private armed vessel, empowering them to take or destroy such trading ships or interrupt such commerce."

This provision was not adopted.[1]

[1] "How much better it would have been for Great Britain," observed Mr. C. H. Butler in an address on the subject at the Buffalo meeting of the International Law Association in 1899, "to have accepted this article was demonstrated less than thirty years afterwards, when, during the War of 1812, the Power whose offer to waive that belligerent right of naval warfare had been refused, swept down upon British commerce all over the world, and in less than thirty months captured or destroyed more than twenty-five hundred vessels, which with their cargoes amounted in value to millions of pounds sterling.'

In his message of December 1854, President Pierce referred to then pending suggestions on the subject in the following terms :—

"The proposal to surrender the right to employ privateers is professedly founded upon the principle that private property of unoffending non-combatants, though enemies, should be exempt from the ravages of war; but the proposed surrender goes but little way in carrying out that principle, which equally requires that such private property should not be seized or molested by national ships of war. Should the leading Powers of Europe concur in proposing, as a rule of international law, to exempt private property upon the ocean from seizure by public armed cruisers as well as by privateers, the United States will readily meet them upon that broad ground."

The refusal of the United States Government to sign the Declaration of Paris, it is well known, was a consequence of the refusal of the Powers to agree to this proposal.

In 1870, on the outbreak of the Franco-Prussian War, Count Bismarck telegraphed to the Prussian Minister at Washington: "For your guidance, private property on high seas will be exempted from seizure by His Majesty's ships without regard to reciprocity." The exemption, however, was not maintained by Prussia.[1]

[1] Both Austria and Prussia, however, observed the principle of immunity in 1866.

Mr. Secretary Fish concluded, on February 26, 1871, a treaty with Italy, Article XII. of which provides that in the event of war—

"The private property of the citizens and subjects (of the contracting States), with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military forces of either party; it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party."

In his Message of December 1898, President M'Kinley again asserted the American doctrine on the subject in the following passage :—

"The experiences of the last year bring forcibly home to us a sense of the burdens and the waste of war. We desire, in common with most civilised nations, to reduce to the lowest possible point the damage sustained in time

of war by peaceful trade and commerce. It is true, we may suffer in such cases less than other communities, but all nations are damaged more or less by the state of uneasiness and apprehension into which an outbreak of hostilities throws the entire commercial world.

"It should be our object, therefore, to minimise, so far as practicable, this inevitable loss and disturbance. This purpose can probably best be accomplished by an international agreement to regard all private property at sea as exempt from capture or destruction by the forces of belligerent Powers. The United States Government has for many years advocated this humane and beneficent principle, and is now in a position to recommend it to other Powers without the imputation of selfish motives. I therefore suggest for your consideration that the Executive be authorised to correspond with the Governments of the principal maritime Powers, with a view of incorporating into the permanent law of civilised nations the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerent Powers."

Resolutions were introduced in both Houses of Congress endorsing this recommendation. The shortness of the session, however, prevented final action on the resolutions, "but the sentiment which was developed was overwhelming in favour of adopting the rule of exemption, under proper restrictions as to contraband and blockade. Congress at the same session passed the Naval Personal Bill, which abolished prize money, thus removing one of the strongest incentives for capture of private property, and eliminating all questions as to the rights of seamen and officers." [1]

[1] Butler, *op. cit.*

The subject, it is seen, has been consistently kept in the foreground by successive Presidents, and it has repeatedly been brought to the notice of foreign Governments; but owing chiefly to the unwillingness of Great Britain to countenance change in the existing practice, acquiescence on the part of other Governments has remained until now without effect.

This brings us down to the proposition made in 1899 by the American delegates at The Hague Conference, which ruled it beyond the scope of its deliberations. The proposition is not clear. The words "or seizure" in the phrase "exempt from capture *or seizure*," which, by the way, are borrowed from the Italo-American Treaty of 1871, do not tally with the reservation as to contraband. Seizure may be indispensable to ascertain whether the arrested vessel has contraband on board or not.

The proposal that nations should recognise the immunity of private property at sea has also been discussed by many writers in England and France. Yet profound disagreement prevails among writers and statesmen as to the form progress in this branch of International Law can take.

The Institute of International Law, at its meeting in 1877 at Zürich, declared: "Private property, whether neutral or enemy, sailing under enemy flag or neutral flag, is inviolable." [1]

Professor Lorimer went the length of holding this to be the rule of law of Europe, and its non-recognition as the exception.[2]

We frequently read in humanitarian writings on the rights of belligerents at sea, that the object of reform should be to assimilate property at sea to property on land, on the assumption that the natures of war at sea and war on land are identical, and that immunity of private property on land is already admitted as a principle of International Law.

The subject requires careful discrimination.

War is an armed conflict between communities or nations, the object of which is that the antagonist be forced to sue for peace. These communities or nations are represented in the modern world by constituted authorities and armies, but war can not be confined to these authorities and armies.

An invading army, before the practice of war became more refined, lived by foraging and pillage in the invaded country. Attenuations followed on the rise of standing and regular armies, and the consequent more marked distinction between soldier and civilian. They have now taken the form of compounding for plunder, systematic requisitions and contributions, the confining of the right of levying these to generals and commanders-in-chief, the institution of quittances or bills drawn by the belligerent invader on the invaded Power and handed in payment to the private persons whose movable belongings have been

[1] The following declaration on the assimilation proposed by the Institute was made a the time by Professor Montague Bernard:

"To place the ships and property of enemies on the same footing with those of neutrals, to treat both alike as entitled to the same immunity in all respects, is in my opinion an error. It confounds together things which are essentially different. A belligerent may, if he will, refrain from capturing, under ordinary circumstances, the ships and property of private persons, subjects of his enemy; but he has, and must I think retain, the right to take possession of them whenever the necessities of war require it. The circumstances out of which such a necessity may arise cannot, I conceive, be precisely defined; certainly they do not appear to me to be satisfactorily provided for in these propositions. On the other hand, the right of neutrals to immunity from capture is absolute, except in circumstances specified and defined by usage. This error runs through all the propositions to which the Resolution refers. Regarded as solely applicable to neutrals, the propositions appear to me to be defective and incomplete, to be in some respects incorrect, and on almost all the points as to which controversies have arisen, to be susceptible of different interpretations. The adoption of them, therefore, would not secure uniformity of practice: I apprehend that, on the contrary, it would multiply disputes."—(*Annuaire de l'Institut de droit international* for the year 1877, p. 95.)

[2] Lorimer's *Institute of the Laws of Nations*, vol. ii. p. 94.

appropriated or used, and of war indemnities. These are methods of lessening the hardships of war as regards the private property on land of the subjects of belligerent States.

The tendency of the attenuations is obviously not to arrive at immunity, but to develop an organised system by which damage and losses to individuals, whom the fortune of war has brought into immediate contact with the enemy, are spread over the whole community. It is not, therefore, accurate to speak of immunity of private property in warfare on land as if it already existed.

To substitute systematic for chaotic seizure and plunder on land was obviously in the interest both of invader and invaded, and humanity in this, as in most other cases, has only been another term for the common interest of mankind.

The considerations which have led mankind to systematise the practice of war in regard to private property on land, do not arise in the same form in connection with private property at sea. Here there is no question of seizing the live-stock or the bedding, or the food, or the utensils of the private citizen. If ship and cargo are captured, it may be hard upon the merchant, but such captures do not directly deprive him of the necessaries of life. Yet, as in the case of war on land, its hardships have been attenuated, and progress has been made by developing a more systematic procedure of capture of private property at sea. Thus exemption from capture is now allowed by belligerents to enemy merchant ships which, at the outbreak of war, are on the way to one of their ports, and they also allow enemy merchantmen, in their ports at its outbreak, a certain time to leave them.[1] A somewhat similar practice exists as regards pursuit of merchant ships which happen to be in a neutral port at the same time with an enemy warship.[2] Privateering has been abandoned by the Powers which signed the Declaration of Paris of 1856; and so strong is public opinion in Europe against it, that neither the United States nor Spain in their late war, though not signatories of the Declaration, resorted to it.[3] Lastly has grown up, on grounds similar to those which have led to the indulgence shown to private property on land, a now generally recognised immunity from capture of small vessels engaged in the coast fisheries, provided they are in no wise made to serve the purposes of war.[4]

[1] In the Franco-German War of 1870, the commanding officers of the French Fleet were ordered to grant thirty days' respite to enemy's trading vessels to leave French ports in case they should be there, or enter in ignorance after outbreak of war. The Germans allowed a respite of six weeks for the same purpose.

[2] It has become a general rule that in this case the local authorities detain the warship till twenty-four hours after the departure of the other.

[3] Comp. p. 204.

[4] Ships of discovery or ships employed on scientific missions are also exempt from capture. See also instances of exemption under Chap. IX. Comp. Arts. I. to IV. of Convention as to application of Geneva Convention to Naval War, on hospital ships, p. 243.

The object of these improvements has been to make the operations of war systematic, to enable the private citizen to estimate his risks and take the necessary precautions to avoid capture, and to restrict acts of war to the purpose of bringing it to a speedy conclusion.

It is seen that there is no general immunity for private property yet known to the laws of war. It may be asked whether a war, by its very nature, does not seem to prevent the growth of any such immunity. The object of each belligerent is to break the enemy's power, and force him to sue for peace. To break his power it is not enough to defeat him in the open field; he must be prevented from repairing his loss both in men and in munitions of war. To bring the war to an end may imply crippling his material resources, his trade, and his manufactures.

To capture at sea raw materials used in the manufacturing industry of a belligerent State, or products on the sale of which its prosperity, and therefore its taxable sources, depend, may be viewed as one of the least cruel objects which the belligerents pursue. Moreover, to capture the merchant vessels which carry these goods, and even to keep the seamen navigating them prisoners, is to prevent the employment of the ships by the enemy as transports or cruisers, and the repairing, from among the seamen of the mercantile marine, of losses of men in the official navy.[1]

[1] The Rev. T. J. Lawrence in his *Principles of International Law* (1898) takes a different view. The present practice, he says, "carries with it the retention as prisoners of war of the crews of the captured ships, though they are as truly non-combatants as the artisans and miners of an occupied province, whom no one dreams of reducing to captivity," p. 414. With all deference for the hardly ever failing clearness of vision of my able colleague, I think he has missed the main consideration. I have pointed it out in the text.
See Lord Chancellor Loreburn on the same subject, p. 176.

The assimilation of private property at sea to private property on land, it is seen, would mean that the State to which the captured vessels belonged should indemnify the ship and cargo owners for their loss, which, be it observed in passing, is not only a matter of international law, but is also a question of domestic regulation.[2] In naval war, however, the circumstances are not exactly the same. After the outbreak of war, every shipowner and shipper belonging to a belligerent State knows the risk he incurs in sending ships or goods across sea. He has, moreover, the option of keeping ship or cargo in port, or of paying war rates of insurance, or again the shipper has the option of sending his goods under the protection of a neutral flag. If he exposes his ship or cargo to the risks of capture, it is that he has calcu-

[2] In special Note on proposal of a "national indemnity" for captures, p. 200.

lated the chances of escape, and chosen to run the risks. To indemnify him for losses incurred might be to relieve the shipowner or shipper from the consequences of his want of foresight and caution.

Whether it is expedient for England at the present day to agree to the immunity of private property at sea from capture, must be dictated by the circumstances of the particular war in which she might be engaged. It is quite conceivable that different considerations would weigh with her in a war with the United States[1] from those which would arise in a war with France or Germany. In the case of the United States, it might be in the interest of both parties to localise the operations of war, and to interfere as little as possible (perhaps for the joint exclusion of neutral vessels) with the traffic across the Atlantic. In the case of a war with France or Germany, England might consider the closing of the sea to all traffic by the merchantmen of the enemy very much to her own interest.

Whether England would be benefited by the immunity of her commerce from capture is a question which it is difficult to decide in the abstract. She might no doubt be exposed to a combination of the Powers against her, and thus be prevented from exercising such a protection over her maritime trade as would render its transference to neutral bottoms needless.[2] On the other hand, there is the consideration of whether transfers of ships to neutral flags, which are not *bona fide*, are valid against a belligerent. In case of doubt, the rates of insurance might be almost as heavy under the neutral as under the belligerent flag. Belligerent cargo-owners, having the alternative of using a ship liable to capture or one not so liable, would naturally choose the latter; but would this affect the great mass of traffic of a carrying country like England, which alone possesses the means of doing its own trade?[3]

Apart from expediency, necessity of war, that is, the necessity in which, by the nature of things, a commander is placed of preserving his own forces against destruction, and of defeating the forces of the enemy, might frustrate the operation of the best-devised rules for the protection of private property.

[1] The following thoughtful passage in Capt. A. T. Mahan's great book on Sea Power is worth meditation in this connection :—

"The circumstances of naval war have changed so much within the last hundred years, that it may be doubted whether such disastrous effects on the one hand, or such brilliant prosperity on the other, as were seen in the wars between England and France, could now recur. In her secure and haughty sway of the seas, England imposed a yoke on neutrals which will never again be borne; and the principle that the flag covers the goods is for ever secured. The commerce of a belligerent can therefore now be safely carried on in neutral ships, except when contrabrand of war or to blockaded ports; and as regards the latter, it is also certain that there will be no more paper blockades. Putting aside, therefore, the question of defending her seaports from capture or contribution, as to which there is practical unanimity in theory and entire indifference in practice, what need has the United States of sea power? Her commerce is even now carried on by others; why should her people desire that which, if possessed, must be defended at great cost?"—*Influence of Sea Power upon History* (1660–1783), 5th ed., London, p. 84 (no date). (Ref. dated Dec. 1889.)

[2] It is interesting in this connection to read another passage in Capt. Mahan's *Influence of Sea Power upon History*, London, 1889 :—"There was . . . an impression largely held by French officers of that day" (*i.e.* end of 18th century), "and yet more widely spread in the United States now, of the efficacy of commerce-destroying as a main reliance in war, especially when directed against a commercial country like Great Britain. . . . The harassment and distress caused to a country by serious interference with its commerce will be conceded by all. It is doubtless a most important secondary operation in naval war, and is not likely to be abandoned till war itself shall cease; but regarded as a primary and fundamental measure, sufficent in itself to crush an enemy, it is probably a delusion, and a most dangerous delusion, when presented in the fascinating garb of cheapness to the representatives of a people. . . . For two hundred years England has been the great commercial nation of the world. More than any other, her wealth has been entrusted to the sea in war as in peace; yet of all nations she has ever been most reluctant to concede the immunities of commerce and the rights of neutrals. Regarded not as a matter of right but of policy, history has justified the refusal; and if she maintain her navy in full strength, the future will doubtless repeat the lesson of the past."—Pp. 539–540.

This passage, by the bye, answers the question put in a letter to the *Times*, signed *Pax* (March 30, 1907), in which the distinguished writer asks if there is any known instance in which destruction of private property at sea—blockades excepted—has seriously affected the result of a war, probably in the sense he wishes to elicit.

[3] The question has been dealt with very fully by the International Law Association in papers by Mr. Charles H. Butler, of the New York Bar, and the present writer at the Buffalo meeting in 1899; by Mr. Justice Phillimore, Mr. Wood Renton, M. Georges Marais, and Mr. C. C. Hyde on behalf of an American committee on the subject, at the Rouen meeting in 1900; and by Mr. Justice Kennedy at the Berlin meeting in 1906.

See also articles in the June Nos. (1907) of the *National Review*, by Capt. Mahan, and *Nineteenth Century*, by Mr. Julian S. Corbett against, and of the *Albany Review*, by Mr. Francis W. Hirst, in favour of, Immunity.

Prof. Oppenheim, in his *International Law* (1906, vol. ii. p. 186), observes that "whereas formerly continental opinion was nearly unanimous in postulating the abolition of the rule (*e.g.* liability to capture), the number of those is increasing who defend its preservation."

Lastly, a question of contraband is involved. Contraband is necessarily and for obvious reasons excepted from the proposed immunity. Therefore the presence in the cargo of unconditional contraband (also enemy troops) would cancel the immunity of the ship and entail all the existing inconveniences, except confiscation, against innocent[1] ship-owner and innocent cargo-owners. The presence in the cargo of conditional contraband would entail the same inconveniences for the non-contraband cargo. The contractual adoption of the British rules as to pre-emption[2] might, however, dispense with trial by a Prize Court in the case of conditional contraband.

[1] The proposers of immunity do not seem to have dealt with the consequences for the ship-owner of knowingly carrying unconditional contraband.

[2] See p. 92, note [1].

Would the abolition of capture leave the power to requisition ship and cargo intact? Under Art. LIII. of The Hague Convention on the Laws and Customs of War,[3] cases governed by maritime law are excepted. Assimilation of land and maritime practice would be forthwith effected by the striking-out of the exception in Art. LIII., but this would abolish at the same time the right to *confiscate* even absolute contraband.

[3] See p. 45

The advocates of immunity have hitherto confined themselves to the vague enunciation of a desire to see it adopted. The subject, however, can only be satisfactorily considered in connection with all its working conditions. For the purpose of ascertaining them, moreover, it is necessary to determine what is meant by immunity. Is the immunity that which is practised in regard to neutral private property at sea, or is it the supposed immunity of enemy private property on land? The consequences of the one point of view are very different from those of the other. The annexed draft forms of treaty[4] treat the subject first from the one and then from the other. The note on the proposal of turning the difficulty by a system of National Indemnification,[5] though beyond the scope of International Law and Practice, is added to enable the reader to take a comprehensive view of the question in its domestic as well as its international bearings.

[4] See p. 172 *et seq.* and 176 *et seq.*

[5] See p. 210.

# IX

# LIMITATION OF THE AREA OF VISIT AND SEARCH

It seems contrary to common sense that neutral ships should be exposed to being detained, taken out of their course, and overhauled on mere suspicion of carrying contraband, when they are so far from the seat of war that there can be no presumption as to their destination. Neutrals have a right to carry on their ordinary business unmolested in so far as they do nothing to assist either belligerent. When they are beyond a certain distance from the seat of war, it seems reasonable that the presumption that they are merely carrying on their legitimate business be considered absolute. Such a limitation of the area of hostilities is not only feasible, but it was actually put in practice by the British Government during the Boer war.

As early as January 1900 it was reported that the British Government had issued instructions to British naval commanders not to stop or search German merchant vessels at any places not in the vicinity of the seat of war. There is no British statement in our own publications, the only official information on the subject having been given by the German Chancellor in a speech to the Reichstag. According to this information, the area was ultimately limited as north of Aden, and afterwards it was agreed that the immunity from search should be extended to all places beyond a distance from the seat of war equal to the distance from it of Aden. This was substantially correct, though the telegrams sent by the Admiralty can hardly be said to have fixed any precise area. As a fact, the Commanders-in-Chief on the East Indies and Cape of Good Hope Stations were instructed that, in consequence of the great practical difficulty of proving—*at ports so remote from the scene of war operations as Aden and Perim*—the real destination of contraband of war carried by vessels visiting those parts, directions were to be given to the officers concerned to cease to search such vessels, and to merely report to the Commander-in-Chief at the Cape the names of ships suspected of carrying contraband, and the date of clearance.

In the course of the Russo-Japanese war the question was raised this time by Great Britain. Lord Lansdowne called the

attention of the Russian Foreign Office to the extreme inconvenience to neutral commerce of the Russian search for contraband, not only in the proximity of the scene of war, but all over the world, and especially at places at which neutral commerce could be most effectually intercepted. "H.M. Government had become aware that a large addition was likely to be made to the number of Russian cruisers employed in this manner, and they had, therefore, to contemplate the possibility that such vessels would shortly be found patrolling the narrow seas which lie on the route from Great Britain to Japan in such a manner as to render it virtually impossible for any neutral vessel to escape their attention. The effects of such interference with neutral trade would be disastrous to legitimate commerce passing from a British port in the United Kingdom to a British port in the Far East."

The British Government had no desire to place obstacles in the way of a belligerent desiring to take reasonable precautions in order to prevent the enemy from receiving supplies. They insisted, however, that the right of taking such precautions did not imply "a consequential right *to intercept at any distance from the scene of operations*, and without proof that the supplies in question were really destined for the use of the enemy's forces, any articles which that belligerent might determine to regard as contraband of war."[1]

[1] Lord Lansdowne to Sir C. Hardinge, August 10, 1904.

The position thus assumed is not clear. On the one hand, the British claim did not, it is seen, go as far as the restriction Great Britain consented to place on her own right of search during the Boer war, seeming to apply only to the case of ships carrying conditional contraband. On the other, the complaint is based on the "interference" with neutral trade, which means the stoppage and search of vessels to ascertain whether they have contraband of any kind on board or not.

It must not be forgotten that restriction of the rights of the belligerent necessarily entails extension of the duties of the neutral. The belligerent has an unquestioned right to "interfere" with all neutral vessels navigating in the direction of the seat of war, for the purpose of ascertaining whether they are carrying any kind of contraband or not. Visit and search might be rendered less necessary by a system of certification of the ship's documents, as between States which ensure by domestic regulations a correspondingly strict observance of neutral duty.[2]

[2] See suggestions on this subject, pp. 83 and 160.

# X

# EXCLUSION OF SPECIFIC AREAS FROM HOSTILITIES, AND NEUTRALISATION BY PROCLAMATION

From time to time questions of adding to existing neutralised areas are raised. When it was announced in 1905 that a British Fleet was about to manœuvre in the Baltic Sea, several German newspapers suggested that Germany should combine with other Baltic Powers to assure its neutralisation. This was merely reviving an idea which had come and gone many times before.[1] No official observation on the subject, however, was made on the part of any Baltic Power, inasmuch as the Baltic is still an open sea for the whole world, without restriction of any kind; and even hostilities between any two non-Baltic Powers could be carried on in the Baltic, as elsewhere on the High Sea, under the existing practice.[2]

When the Doggerbank incident occurred, the possibility of operations of war being carried on within a few miles of British home ports, and amid the busy traffic of the North Sea, was brought vividly home to British minds.

There are many instances of neutralised areas, and among them a remarkable instance of practical neutralisation in the case of the American lakes. In 1817, at the instance of John Quincy Adams, the United States and Great Britain entered into a compact whereby the Great Lakes, and the waterways from them to the Ocean by the St. Lawrence River, which divide the United States from the Dominion of Canada, were practically excluded from any possible hostilities. Through a simple agreement, "conditions which make for peace and prosperity, and the absence of those which so often lead to disastrous war, have for nearly a century reigned over these great inland waters, whose commerce, conducted for the benefit of the States and nations of Europe and America, rivals that which passes through the Suez Canal or over the Mediterranean Sea, and with a result foreshadowed in these words of President Monroe in his communication to the Senate commending the proposed agreement:

[1] Several treaties, such as the Peace of Roeskilde (1658), the Russo-Swedish Treaties of 1759, the Russo-Swedish Treaty of 1780, and the Russo-Prussian Treaty of 1781, have declared the Baltic closed against all warfare. The Treaty of 1780 provided that Russia and Denmark, being equally interested to assure the safety and tranquillity of the Baltic Sea, "shall continue to sustain its character as a closed sea, in which all nations may and must navigate in peace. . . ."

[2] The subject was revived as recently as March 1907 by the Paris correspondent of the *Times*. His communication elicited a letter to that paper (March 16) from the Danish Minister in London, in which he stated: "To maintain the free passage to the Baltic *sans entrave quel conque* is an obligation accepted by Denmark in the Treaty of March 14, 1857, with all European Powers; it is a recognised part of International Law. There is not a shadow of support for the belief that any Power contemplates a change. . . . There is not a man alive in Denmark who does not reject the idea as one pregnant with danger to the neutral policy of his country, which King, Government, and people alike consider their salvation."—(See the further communications from correspondents of the *Times*, March 6, 11, 15, and 19.)

'In order to avoid collision and save expense.' Forts which had been erected at salient points on either side of the lakes and rivers dividing the United States from Canada, which but for this agreement would, in the natural course of events, have been enlarged, increasingly garrisoned, and provided with modern implements of destruction, at large expense, have remained substantially as when the agreement was made, or now constitute but interesting or picturesque ruins; and the great cost of constructing and maintaining, through a long series of years, naval armaments of ever-increasing power has been avoided" (*Memoir of Massachusetts State Board of Trade*, February 13, 1905).

A similar course has been followed as between Burmah and Siam, and Sweden and Norway. See Special Note on "Buffer" Zones, p. 77.

An interesting attempt to exclude the Far East from hostilities was made during the Franco-German War. In 1870, when the news of the outbreak of the war reached Nagasaki, the commander of the French warship *Dupleix* agreed with the commander of the German corvette *Hertha* to consider as neutral all Chinese and Japanese waters, on the ground that their joint European interest took precedence over their private national differences. The project was not carried out, owing to the refusal of the French Government to sanction it.

The Monroe Doctrine may be described as a means towards exclusion of warfare from the American continent.

A sort of Monroe Doctrine is growing into popular favour also throughout the Australian Commonwealth, where it is felt that a continent so far removed from European rivalries ought not to be exposed to complications on account of them.

Might it not become a principle in the public law of Europe, following more or less on the lines of Articles X., XI., and XII. of the General Act of Berlin of February 26, 1885,[1] that any nation or self-governing colony should be enabled, on fulfilling certain conditions, to claim neutralisation?[2]

[1] See text of these articles, p. 75, and a draft form of agreement on the subject, p. 180.

[2] See, on the subject of Permanent Neutrality generally, Kleen, *Lois et Usages de la Neutralité*, Paris, 1898, i. p. 95 *et seq.*; Descamps, *Droit de la Paix et de la Guerre, essai sur l'évolution de la neutralité et sur la constitution du pacigérat*, Paris, 1898, p. 45 *et seq.*; Hagerup, "La neutralité permanente," *Rev. gén. de Droit International Public*, Paris, 1905.

# NOTE ON THE NEUTRALITY OF CONGO BASIN

The text of Articles X., XI., and XII., forming Chapter III. of the General Act of Berlin of February 26, 1885, relative to the neutrality of territories included in the conventional Basin of the Congo, suggests some observations.

"Art. X.—In order to give a new guarantee of security to trade and industry, and to encourage by the maintenance of peace, the development of civilisation in the countries mentioned in Article I.,[1] and placed under the free-trade system, the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to respect the neutrality of the territories, or portions of territories, belonging to the said countries, comprising therein the territorial waters, so long as the Powers which exercise or shall exercise the rights of Sovereignty or Protectorate over those territories, using their option of *proclaiming themselves neutral*, shall fulfil the duties which neutrality requires."

The duties which neutrality requires have still to be determined by common consent.[2]

"Art. XI.—In case a Power exercising rights of Sovereignty or Protectorate in the countries mentioned in Article I., and placed under the free-trade system, should be involved in a war, then the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to lend their good offices in order that the territories belonging to this Power and comprised in the conventional free-trade zone shall by the common consent of this Power and of the other belligerent or belligerents, be placed during the war under the rule of neutrality, and considered as belonging to a non-belligerent State, the belligerents thenceforth abstaining from extending hostilities to the territories thus neutralised, and from using them as a basis for warlike operations."

The motives of providing that the Powers should "bind themselves to use their good offices" to do a thing they were agreed to do, or of inserting a provision in an International Convention that it should be binding on States which "hereafter adopt" the Convention, are not apparent without explanation. The provisions in question were inserted—Sir E. Malet, the chief British delegate, explained—to meet a difficulty which had been experienced in giving effect to the "general wish that the territories enjoying the benefit of the free *régime* should be exempted from the evils of war." The main obstacle was that portions of these territories would belong to States who might be belligerents, having other territories outside the zone, and "that it would not be easy to secure the absolute neutrality

[1] The text of Art. is as follows:—

"Art. I.—The trade of all nations shall enjoy complete freedom:

1. In all the regions forming the basin of the Congo and its outlets. This basin is bounded by the watersheds (or mountain ridges) of the adjacent basins, namely, in particular, those of the Niari, the Ogowé, the Schari, and the Nile, on the north; by the eastern watershed line of the affluents of Lake Tanganyika on the east; and by the watersheds of the basins of the Zambesi and the Logé on the south. It therefore comprises all the regions watered by the Congo and its affluents, including Lake Tanganyika, with its eastern tributaries.

2. In the maritime zone extending along the Atlantic Ocean from the parallel situated in 2° 30′ of south latitude to the mouth of the Logé. The northern boundary will follow the parallel situated 2° 30′ from the coast to the point where it meets the geographical basin of the Congo, avoiding the basin of the Ogowé, to which the provisions of the present Act do not apply. The southern boundary will follow the course of the Logé to its source, and thence pass eastwards till it joins the geographical basin of the Congo.

3. In the zone stretching eastwards from the Congo Basin, as above defined, to the Indian Ocean from 5° of north latitude, to the mouth of the Zambesi in the south, from which point the line of demarcation will ascend the Zambesi to 5 miles above its confluence with the Shiré, and then follow the watershed between the affluents of Lake Nyassa and those of the Zambesi, till at last it reaches the watershed between the waters of the Zambesi and the Congo. It is expressly recognised that in extending the principle of free trade to this eastern zone, the Conference Powers only undertake engagements for themselves, and that in the territories belonging to an independent Sovereign State, this principle shall only be applicable in so far as it is approved by such State. But the Powers agree to use their good offices with the governments established as the African shore of the Indian Ocean for the purpose of obtaining such approval, and in any case of securing the most favourable conditions to the transit (traffic) of all nations.

[2] See pp. 83 *et seq.* and 160 *et seq.*

of given portions of the territories of a belligerent Power." The British Government were "anxious to extend the benefits of neutrality as widely as should be found practicable, but they felt it to be absolutely necessary to insist on such provisions as should secure that, if parts of the territories of a belligerent were to be respected, as enjoying immunity from hostilities, they should in no sense and in no degree be capable of serving as a base of operations for the forces of such belligerent." France and Portugal, "while admitting that it was natural that such provisions should be demanded, felt that it would be inconsistent with sovereign rights to accept them"; it was impossible to reconcile the contending views; and consequently all that was accepted was a declaration that the Signatory Powers would use their good offices, in case of a war in which one or more of the belligerents should hold territory in the free basin, to obtain a neutralisation of such territory during the war, by special arrangement; "under these conditions Great Britain, if she should be at war, could consent to the neutrality of belligerent territory in the free zone, but would be empowered to make her own terms by Convention." "The result of the provision is, that opportunity is given to provide for special neutralisation, but that the rights of the Sovereign State and freedom of the belligerent Power are fully reserved."

As regards States whose entire territories are in the free zone, such as the newly formed Free State of the Congo, the British delegate explained that the engagement of the Signatory Powers to respect their neutrality "does not involve a guarantee, but it entails a moral obligation."[1]

"Art. XII.—In case a serious disagreement originating on the subject of, or in the limits of, the territories mentioned in Article I. and placed under the free-trade system, should arise between any Signatory Powers to the present Act, or the Powers which may become Parties to it, these Powers bind themselves, before appealing to arms, to have recourse to the mediation of one or more of the friendly Powers.

In a similar case the same Powers reserve to themselves the option of having recourse to arbitration."

[1] The quotations are from Sir E. Malet's letter to Earl Granville, dated Berlin, Feb. 21, 1885.

## NOTE ON "BUFFER" ZONES

"Buffer" Zones are of quite recent origin[1] as a political creation; *i.e.* where their object is to establish upon the territory of two contiguous States a strip or Zone on either side of the frontier which the respective States *agree to regard* as neutral, on which the parties undertake to erect no fortifications, and to maintain no armed forces but those necessary to enforce the ordinary rights of government. The word "neutral" does not correctly describe the character of the zone. It is not neutral in the sense of being recognised as such by any third State, and it necessarily ceases to be neutral in case of war between the States concerned. The word "buffer" comes nearest to the object, but even this term implies more than is meant.

The "buffer" zones between European and native possessions outside Europe differ according to their different purposes. Thus 8 kilometres on either side of the frontier were established by an agreement of April 12, 1882, between the King of Cambodge (under French protectorate) and the Governor of Cochin-China for the purpose of repressing a number of iniquities. Under this treaty the police authorities of both parties were allowed free access to exercise their jurisdiction throughout the zone. Between Spain and Morocco a treaty of March 5, 1894, established between the Camp of Melilla and Moroccan territory, a zone within which no new roads were to be made, no herds to be allowed to graze, no land to be cultivated, no troops of either party, or even private persons carrying arms, to set foot, no inhabitants to dwell, and all habitations to be razed. The zone between Burmah and Siam, established by an agreement between Great Britain and France, dated January 15, 1896, declared "the portion of Siam which is comprised within the drainage basin of the Menam, and of the coast streams of a corresponding longitude," neutral as between them. Within this area the two Powers undertook not to "operate by their military or naval forces, except in so far as they might do so in concert for any purpose requisite for maintaining the independence of Siam." They also undertook not to acquire within that area any privileges or commercial facilities not extended to both of them.

"Buffer" zones might fulfil a useful purpose even in Europe. They would obviously react against the well-known feeling known as "esprit de frontière," and diminish the danger of incidents arising out of this feeling, and might attenuate the rivalry of neighbouring counter-armaments.

These considerations no doubt led the Swedish and Norwegian governments in their settlement of September, 1905, to establish a "buffer" zone of 15 kilometres on either side of the frontier

[1] The institution of "buffer" zones in a more strictly correct sense of the term is of very ancient origin.

One is mentioned in the annals of China two centuries before our era, between the territories of the Huns in the west and those of the Tunguses in the east—a vast area of some 300 or 400 miles, on the opposite margins of which the two peoples kept watch. In Europe, bands of territory from time to time have been made desert to better establish separation. The Romans and Germans protected themselves in this way. In the Middle Ages the Teutonic Order established a frontier belt on the side of Lithuania. Later on, Austria dealt in the same way in her policy in regard to Turkey in the organisation of a "military frontier."

See Nys, *Droit International*, Brussels, 1904, i. p. 418.

between the two States in question. Within these 30 kilometres all existing fortresses are dismantled,[1] no new ones are to be erected, and no armed troops to be maintained; any question between the two States relative to the provisions respecting the "buffer" zone to be decided by arbitration. There are other provisions in the Swedo-Norwegian Treaty, the object of which is to render armaments as *between* them unnecessary.

[1] It was stipulated that the dismantling should be controlled by a technical Commission of three officers of foreign nationality, to be chosen, one by each of the contracting powers, and the third by the two officers thus appointed, or, in default of an agreement on their part, by the President of the Swiss Confederation. The dismantling of the forts in question has now been carried out. The Commission was composed on the part of Sweden of an engineer on the staff of the Austrian army, and on the part of Norway of a Colonel in the German army, and, by agreement of these, of a Colonel in the Dutch army.

## NOTE ON THE PRACTICAL NEUTRALISATION OF THE AMERICAN LAKES

The negotiations for the reduction of the naval force on the American lakes began in 1806, but only matured after Monroe had become President. The Prince Regent in the meantime had agreed to the proposal. A formal agreement was entered into on April 28 and 29, 1817, by an exchange of notes, which could be annulled by either party giving the other six months' notice. The British Government had already issued orders to the officers on the lakes, directing that the limited naval force should be restricted to such services as would "in no respect interfere with the proper duties of the armed vessels of the other party." Orders to the same effect were issued to the American commanding naval officers on service on the lakes. The agreement became effective at once upon the exchange of notes. There is no evidence that Great Britain gave it the formalities of a treaty, and it was not till April 16, 1818, that President Monroe formally notified the Senate of the United States of the arrangement, and submitted to its consideration whether this was "such an arrangement as the Executive is competent to enter into by the powers vested in it by the Constitution, or is such a one as requires the advice and consent of the Senate. . . ." The approval and consent of the Senate were given on April 16, 1818, with no dissenting vote. The Agreement was proclaimed by President Monroe on April 28, and was published in the *National Intelligencer* of April 30. It is as follows:

"Whereas, an arrangement was entered into at the city of Washington, in the month of April, in the year of our Lord one thousand eight hundred and seventeen, between Richard Rush, Esq., at that time acting as secretary for the Department of State of the United States, for and in behalf of the Government of the United States, and the Right Honorable Charles Bagot for and in behalf of His Britannic Majesty, which arrangement is in the words following, to wit:

"'The naval force to be maintained upon the American lakes by His Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is,

"'On Lake Ontario, to one vessel, not exceeding one hundred tons burden, and armed with one eighteen-pound cannon.

"'On the upper lakes, to two vessels, not exceeding like burden each, and armed with like force.

"'On the waters of Lake Champlain, to one vessel not exceeding like burden, and armed with like force.

"'All other armed vessels on those lakes shall be forthwith

dismantled, and no other vessel of war shall be there built or armed.

"'If either party should be hereafter desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

"'The naval force, so to be limited, shall be restricted to such service as will in no respect interfere with the proper duties of the armed vessels of the other party.'

"And whereas the Senate of the United States have approved of the said arrangement and recommended that it should be carried into effect, the same having received the sanction of His Royal Highness, the Prince Regent, acting in the name and on the behalf of His Britannic Majesty.

"Now, therefore, I, James Monroe, President of the United States, do, by this my proclamation, make known and declare that the arrangement aforesaid, and every stipulation thereof, has been duly entered into, concluded and confirmed, and is of full force and effect." [1]

[1] See J. M. Callahan, *The Neutrality of the American Lakes*, etc. Johns Hopkins Press, 1898.

# XI

# NEUTRALISATION OF OCEAN ROUTES

A MOVEMENT recently set on foot at the instance of the late Edward Atkinson, the well-known Boston economist, and warmly supported by the Massachusetts State Board of Trade, seeks to establish by Treaty "neutral zones from the ports of North America to the ports of Great Britain and Ireland and the Continent of Europe, within which zones steamship and sailing vessels in the conduct of lawful commerce shall be free to pass without seizure or interruption in time of war."

There is no precedent of neutralisation of any such area of the High Sea.

International rivers, ocean canals, and neutralised States are obviously no criterion in discussing a proposal to neutralise a strip of the ocean, which may be defined accurately enough on the map and which skilful navigators could approximately determine, but which might be violated without any practical means of detection by a belligerent commander whenever he misread, or it suited him to misread, his bearings.

The example of territorial waters is also no criterion, there being in their case a fixed boundary on one side in the shore. Land-bound seas are still less so.

Nevertheless the Massachusetts State Board of Trade believes "that the time has come to extend neutralisation to

what may be called the 'ferry ways' of the great commerce passing over the Atlantic. The lines of traffic, over which steamers and sailing vessels pass, are now," it observes, "almost as well defined as if they were rivers bordered by banks. These ways of commerce can be defined by treaty among the States which have became interdependent for food, fibres, and fabrics of every kind. They may be neutralised by States bordering upon the Atlantic and those that can be reached from the Ocean."

This may be regarded as a sort of alternative proposition to the one the United States Government will probably put forward at the next Hague Peace Conference in favour of making all private property at sea free from capture.[1]

[1] See Chapter VIII., p. 63.

The limitation of the area of hostilities might come practically to the same result in many cases.[2]

[2] See Chapters IX. and X., pp. 71 and 73.

## XII

# REVISION OF THE INTERNATIONAL LAW OF NEUTRALITY

THE general notion or principle of the International Law of Neutrality is that it is the duty of neutral States to abstain from all acts favourable to the success of either belligerent against the other. In practice this notion or principle does not work out in all contingencies homogeneously. I have endeavoured to group the differences in the following subdivisions:

1. Absolute duty of the neutral State to abstain, in its corporate capacity, from all acts which may help the one belligerent to the disadvantage of the other.

2. Relative duty of the neutral State to prevent its subjects from helping either belligerent.

3. Contingent duty of the neutral State to grant impartially to the one or the other belligerent any rights, advantages, or privileges which, according to the recognised usage of nations, are not considered as an intervention in the struggle.

4. Right of belligerent State to interfere with the subjects or citizens, and their property, of the neutral State which interference, by the recognised usage of nations, they are bound to suffer during the continuance of war.

On the *first* of these duties there is no essential difference of opinion. The *fourth* relates to (1) contraband, (2) visit and search, and (3) blockade, the controversial matter of which is dealt with under separate headings.

With regard to the *second*, it is clear that the duty of a State to forbear from committing any act which may be of assistance to either belligerent cannot in reason be absolute as regards private persons merely within its territorial jurisdiction. The practice, therefore, is to let the belligerents themselves look after private infringers of neutrality. In recent times, however, with the development of means of communication, it

has become possible for States to exercise a more effective control over the acts of their subjects or citizens than in the past, and the, so to speak, moral responsibility of the neutral State has correspondingly increased. Down to the present day, though the practice of States is not uniform, no change of principle has resulted from the altered circumstances; and a much greater latitude is left to neutral subjects and citizens than is consistent with the idea of strict neutrality. A great exception was consented to, as between Great Britain and the United States, in 1871, in the treaty of submission of the Alabama case to arbitration. Great Britain on her part did not, however, assent to the rules laid down in the treaty as a statement of International Law; and though both Great Britain and the United States have Foreign Enlistment Acts, they are merely municipal laws, and lie quite outside the scope of International Law as it stands at present. Even direct sales of arms and munitions of war are still regarded as purely mercantile acts, and no purely mercantile acts are as yet considered a violation of neutrality.[1] Yet it is quite conceivable that the sales might take such proportions as to involve national responsibility.

As regards the *third*, the same remarks apply to loans of money raised within the jurisdiction of a neutral State. It is certain that the greater credit of one of the belligerent States would enable it more freely than the other to procure money for the purposes of war. The general practice of States, however, has as yet shown itself unfavourable to imposing any restriction.

The question is how to bring the practice of neutrality into closer harmony, than at present, with the principle its character implies.

Should not the tendency of reform in International Law be, among other things, towards increasing the difficulties of making war, seeing that no war at the present day can be conducted without involving interests of neutral States?

The correlative of the restriction of belligerent right is, of course, the extension of neutral duty. Every movement towards relief of neutrals from the inconvenience of a state of belligerency to their subjects and citizens, implies that neutral States themselves will enforce a stricter observance of their neutrality by their subjects and citizens.

It has also to be considered whether it is not possible to suggest some rules which might serve as a channel, as it were, to carry off the flood of neutral irritation which might break forth, if we were suddenly plunged into an important European

[1] Six years before the American Civil War, President Pierce, in his message to the thirty-fourth Congress, first session, made the following statement:—

"The laws of the United States do not forbid their citizens to sell to either of the belligerent Powers articles of contraband of war, or to take munitions of war or soldiers on board their private ships for transportation; and although in so doing the individual citizen exposes his person or property to some of the hazards of war, his acts do not involve a breach of the national neutrality, nor, of themselves, implicate the Government."

During the Franco-Prussian War there was correspondence between the Prussian Ambassador in London and Earl Granville as to exports of arms and munitions of war by British merchants to France, and the question of their legality was the subject of an interesting interchange of opinions between the two countries. Earl Granville asserted that the export of arms to a belligerent country by private citizens of a neutral one was not forbidden by the Law of Nations, and recalled that Prussia herself, during the Crimean War, had done nothing to prevent the copious supply of arms and contraband of war to Russia by the States of the Zollverein,—in fact, that the Prussian Government, when this state of things was brought to its notice, affirmed that it could not interfere with the course of trade. Earl Granville further pointed out the difficulty of making any alteration of this rule of free export, inasmuch as any prohibition could be easily evaded by giving a neutral destination to the prohibited articles. "*The suggestion of exacting a bond from shippers*," he said, "would be most onerous to the mercantile community, would be easily evaded, and at the best would be no security against ultimate destination" ("Franco-German War," No. 1, 1871, p. 80).

Similar representations were made to the United States Government as to shipments of men, arms, and ammunition to France by the *Lafayette*. As regards arms and ammunition, the United States Government contended that they were articles of legitimate commerce, with which the United States could not interfere, although the vessel might run the risk of being detained by the cruisers of North Germany on her voyage to France.

The German contention in these controversies was that it was incompatible with strict neutrality that French agents should be permitted to buy up in the neutral country, under the eyes and with the cognisance of the neutral Government, "many thousands of breach-loaders, revolvers, and pistols, with the requisite ammunition, in order to arm therewith the French people, and make the formation of fresh army corps possible after the regular armies of France have been defeated and surrounded."

war, or which might save us from being ourselves, as a neutral State, dragged into some attitude, exposing us to great national irritation on the part of some foreign belligerent, as, in the case of the United States, after the Alabama incidents, and as seemed to threaten in connection with the *Bundesrath* case, where we were belligerents.

Of how far Great Britain can go in this direction, it is difficult to form a clear estimate at present. It would, of course, be contrary to the principle of the independence of States to seek to hold any State responsible for acts of infringement of neutrality by those within its jurisdiction, which it does not possess legal machinery to repress. Still this would not exonerate a State from endeavouring to provide a proper machinery of repression. Several States have no enactments which specifically punish infringements of neutrality; in their case it is left to the belligerent himself to enforce such remedy as the law of nations permits. Other States treat certain violations of the laws of neutrality according to their consequences in causing national damage or difficulties. This is the case with France.[1] It has also to be taken into account that acts which on a small scale may escape the control of a Government may, on a large one, become notorious or come otherwise within official cognisance.

In the Treaty of Washington (1871) it was admitted that the limit of the obligation of a State for the acts of citizens was that it should use "due diligence." There may be different opinions as to what amounts to "due diligence," and, as above said, a country can only enforce, by its judicial methods and procedure, the laws it possesses for the prevention of acts of infringement of neutrality committed on its soil.

Under the same treaty, which the High Contracting Powers agreed to observe as between themselves in future, the neutral Government is bound to use "due diligence," where it has "reasonable ground" to believe that any acts have a belligerent character, in "preventing" them, and the acts which it is bound to use due diligence in preventing are the following:

1. The fitting out, arming, or equipping any vessel;

2. The departure from its jurisdiction of any vessel having been specially adapted in whole or in part within such jurisdiction to warlike uses;

3. The making use by a belligerent of its ports or waters (*a*) As a base of naval operations against the other; or

(*b*) For the purpose of the renewal or augmenting of military supplies or arms; or

[1] See Arts. LXXXIV. and LXXXV. of the Penal Code, which provide—

"Art. LXXXIV. Whoever shall, by hostile acts not approved by the Government, expose the State to a declaration of war, shall be punished by banishment, and should war follow, by deportation.

"Art. LXXXV. Whoever shall, by acts not approved by the Government, expose Frenchmen to the risk of reprisals, shall be punished by banishment."

The punishments have been altered, but this enactment is otherwise still in force.

(*c*) For the recruitment of men.[1]

Under the British and American Foreign Enlistment Acts the contracting governments give partial effect to these principles.

It must not be forgotten, however, that there is a serious danger in having laws of this character difficult to enforce; it is not unreasonable to contend that neglect of a State to enforce the laws it possesses, to the extent of the vigilance consistent with its institutions, entails responsibility for the consequences of such neglect. Nor would the absence of reciprocity be a perfect answer to a claim by a State whose laws were less stringent.

Great Britain and the United States undertook to bring the Washington Rules to the knowledge of other maritime Powers, and to invite them to adopt them also; but, thus far, nothing has been done to get them accepted among other States. There seems to have been a disinclination on the part of Great Britain to insist on the Rules, which was not originally, but probably afterwards, shared by the United States; and an identical Note agreed to by them in 1876, communicating the Rules to the Powers and inviting their acceptance thereof, was never issued.[2]

The Rules might now be laid before the second Hague Conference and form the basis of the discussion, which is to take place, on the revision of the practice of neutrality.[3]

The questions involved in revising the existing practice of neutrality, however, are of far too great an importance to the British Empire to be dealt with till after a thorough examination of the subject by representatives of all the British interests revision involves, and the assistance of those who have to observe and carry out the law and rules of neutrality in actual practice.

The extent to which neutral ports may be used by belligerent ships (except the interdiction or non-interdiction of carrying prizes into neutral ports), the supply of coals which may be legitimately granted to the latter at neutral coaling stations, the days of grace to be accorded to commercial vessels in leaving enemy ports after the outbreak of hostilities, do not give rise to any very essential differences either in practice or in theory; but they were rightly included in the Russian programme for the second Hague Conference, one of the objects of which is to place on a firm basis of specific agreement even rules which are already observed by States as a matter of international usage.

[1] The passage in the treaty in question is as follows:—

"A neutral Government is bound—

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

"Her Britannic Majesty has commanded Her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of International Law which were in force at the time when the claims mentioned in Art. I. arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of these claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

"And the High Contracting Parties agree to observe these Rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them."

[2] See Parl. Paper, United States, No. 2, 1897.

[3] See Suggested Draft Convention on the subject, p. 160 *et seq.*

Contraband of war, blockades, the destruction of Prizes, the *status* of mail-ships and the conversion of merchant into war-vessels, have been dealt with in special chapters.[1]

[1] See Chapters 13, 14, 15, and 15a, and Suggested Drafts Nos. 10 and 11.

As regards the carrying of Prizes into neutral ports, the rule laid down in the British Neutrality Instructions of February 10, 1904, was that "armed ships of either belligerent are interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of H.M. colonies or possessions abroad." This absolute interdiction figured also in the British regulations issued during the Franco-German War of 1870–71. During the American Civil War the British regulations were less stringent. A captor with his prize, calling at a British port under stress of weather or for any other reason, had to take his departure *on being requested*. The rules prevailing on the Continent, in general, correspond to the earlier British practice.

The later British rule, it is seen, makes no distinction between a prize captured from the enemy and a ship taken from a neutral. Yet capture from the enemy vests an absolute title in the captor, which he can only obtain in the latter case after adjudication by a Prize Court.

To entrust acting upon this distinction (that is, allowing captures from the enemy, but not captured neutral vessels, to be brought into a neutral port) to local authorities might lead to troublesome mistakes. The alternative seems to be either to follow the British rule of absolute exclusion or to allow a belligerent to bring in prizes without distinction. The current British rule in practice probably only has the effect of strengthening the neutral right to enforce immediate departure, as any question or contention may always be made a means of gaining a few hours. Moreover, as a belligerent vessel is permitted to take provisions and coal in accordance with Rule 3 of the *British Instructions*,[2] it might be argued that a prize, though converted *ad hoc* into an "armed ship," is entitled to the benefit of Rule 4.[3] The English system is no doubt the easier one to apply, but, to obtain universal agreement on the subject, qualifications would doubtless be necessary.

[2] See pp. 89 and 90.

[3] See p. 90.

It is not clear why a distinction should be made between a belligerent vessel, and such a vessel accompanied by a captured vessel, or a captured vessel under a belligerent crew. The belligerent commander by being allowed to leave his capture indefinitely in a neutral port would certainly be obtaining assistance from the neutral state, seeing that he would thus be enabled to

resume the use of a prize crew. To be merely allowed to enjoy a convenience for his capture, which he would be allowed for the convenience of his own vessel, does not seem contrary to any principle of abstract justice; whereas, on the contrary, it might be argued that to close a neutral port in all circumstances to a captured vessel is to some extent to prejudge an issue which, under the existing practice of nations, is considered as within the jurisdiction of a properly constituted Prize Court exclusively. The British rule, on the other hand, obviously tends to discourage interference with neutral traffic; a point which should not be lost sight of.

The suggestions I have made in my draft clauses[1] under Art. 9, are intended to combine Anglo-Saxon[2] and Continental views, by a compromise which, like all compromises, is not as simple as either existing rule.

[1] See p. 164.

[2] The United States practice seems to be at present the same as the British, seeing that Professor Bassett Moore in his *Digest* (1907), quotes as the most recent authoritative statement on the subject a reply, dated February 26, 1866, to an inquiry of the Peruvian Legation as to the course the United States would pursue during the war between Spain and Peru. Mr. Seward said: "This government will observe the neutrality which is enjoined by its own municipal law and by the law of nations. No armed vessels of either party will be allowed to bring their prizes into the ports of the United States."

# NOTE ON USE BY BELLIGERENTS OF NEUTRAL PORTS

## Supply of Coal and Provisions to Belligerent Ships; Twenty-four Hours' Rules, etc.

The British Instructions for the observance of neutrality at British Ports, issued on Feb. 10, 1904, by the Foreign Office, were as follows:—

His Majesty being fully determined to observe the duties of neutrality during the existing state of war between Russia and Japan; being, moreover, resolved to prevent, as far as possible, the use of His Majesty's harbours, ports, and coasts, and the waters within His Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following Rules, which are to be treated and enforced as His Majesty's orders and directions:

"Rule 1.—During the continuance of the present state of war, all ships of war of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of His Majesty's colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as to station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities for warlike equipment; and no ship of war of either belligerent shall hereafter be permitted to leave any such port, roadstead, or waters from which any vessel of the other belligerent (whether the same shall be a ship of war or a merchant ship) shall have previously departed until after the expiration of at least *twenty-four hours* from the departure of such last-mentioned vessel beyond the territorial jurisdiction of His Majesty.

"Rule 2.—If there is now in any such port, roadstead, or waters subject to the territorial jurisdiction of the British Crown any ship of war of either belligerent, such ship of war shall leave such port, roadstead, or waters within such time, not less than *twenty-four hours*, as shall be reasonable, having regard to all the circumstances and the condition of such ship as to repairs, provisions, or things necessary for the subsistence of her crew; and if after the date hereof any ship of war of either belligerent shall enter any such port, roadstead, or waters, subject to the territorial jurisdiction of the British Crown, such ship shall depart and put to sea within twenty-four hours after her entrance into any such port, roadstead, or waters, except in case of *stress of weather*, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in *supplies* beyond what may be *necessary for her immediate use*; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after her *necessary repairs* shall have been completed. Provided, nevertheless, that in all cases in which there shall be any *vessels* (whether ships of war or merchant ships) *of both the said belligerent parties in the same port*, roadstead, or waters within the territorial jurisdiction of His Majesty, there shall be an *interval of not less than twenty-four hours* between the departure therefrom of any such vessel (whether a ship of war or merchant ship) of the one belligerent, and the subsequent departure therefrom of any ship of war of the other belligerent; and the time hereby limited for the departure of such ships of war respectively shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but no further or otherwise.

"Rule 3.—No ship of war of either belligerent shall hereafter be permitted while in any such port, roadstead, or waters subject to the territorial jurisdic-

tion of His Majesty, to take in any supplies, except *provisions* and such other things as may be requisite *for the subsistence of her crew*, and except so much *coal only as may be sufficient to carry such vessel to the nearest port* of her own country, or to some nearer named neutral destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of His Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

"RULE 4.—Armed ships of either belligerent are interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of His Majesty's colonies or possessions abroad."

With regard to Rule 3, on the extent to which coal might be supplied to belligerent warships in British ports, the following explanations were issued later on :

It must, however, be borne in mind that the reason for the practice of admitting belligerent vessels of war into neutral ports arises out of the exigencies of life at sea and the hospitality which it is customary to extend to vessels of friendly Powers, and that this principle does not extend to enabling such vessels to utilise a neutral port directly for the purpose of hostile operations. The rule above quoted is not to be understood as having any application to the case of a belligerent fleet proceeding either to the seat of war, or to a position or positions on the line of route, with the object of intercepting neutral vessels on suspicion of carrying contraband of war. Such fleet cannot be permitted to make use in any way of a British port for the purpose of coaling, either directly from the shore, or from colliers accompanying the fleet, whether the vessels of the fleet present themselves at the port at the same time or successively. His Majesty's Government further direct that the same practice be pursued with reference to single belligerent war-vessels, if it be clear that they are proceeding for the purpose of belligerent operations as above defined. This is not to be applied to the case of a vessel putting in on account of actual distress at sea.

At the same time Lord Lansdowne gave Sir C. Hardinge instructions to inform the Russian Government of the British view on the same subject in the following terms :

The amount of coal which might be supplied to a belligerent warship was defined as so much as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer named neutral destination—a formula which would, *e.g.*, entitle a Russian ship of war to take on board, say at Aden, an amount of coal sufficient to carry her to Vladivostock. The practice recognised under this rule, which is based upon considerations of hospitality, ought not, in the opinion of His Majesty's Government, to be extended so as to enable such vessels to make use of a neutral port directly for the purpose of hostile operations. Instructions had accordingly been given that the rule is not to be taken as applying to a belligerent fleet, or to vessels proceeding to the seat of war itself, or to stations from which operations connected with the war might be conducted (Aug. 16, 1904).

## XIII

# CONTRABAND OF WAR

FOODSTUFFS; PRE-EMPTION; COAL; CONTINUOUS VOYAGES

BOTH Statesmen and writers have different views upon these four matters in connection with the exercise of belligerent right, which invariably give rise to controversy when anything in time of war turns upon them.

Specialists in International Law are not agreed as to the circumstances in which a belligerent State is entitled, if at all, to treat *foodstuffs* as contraband of war. Although there have been several recent wars, there are no recent precedents which enable us to ascertain the feeling of contemporary Governments with any certainty. The subject might be of vital importance to this country in certain contingencies.

According to current practice contraband is of two kinds: Absolute contraband, such as arms, machinery for manufacturing arms, ammunition, and any materials which are of direct application in naval or military armaments; and conditional contraband, consisting of articles which are fit for, but not necessarily of direct application to hostile uses. It is not disputed that articles which are absolute contraband are liable to capture and confiscation. It is otherwise as regards conditional contraband.

Great Britain, on her side, has long and consistently held that provisions and liquors fit for the consumption of the enemy's naval or military forces are contraband. Her law, however, provides a palliative, in the case of "naval or victualling stores," for the penalty attaching to absolute contraband,

the Lords of the Admiralty being entitled to exercise a right of *pre-emption* over such stores, *i.e.* to purchase them without condemnation in a Prize Court; in practice, purchases are made at the market value of the goods, with an additional 10 per cent. for loss of profit.[1]

On the Continent no such palliative has yet been adopted; but moved by the same desire to distinguish unmistakable from, so to speak, constructive contraband, and to protect trade against the vexation of uncertainty, many continental jurists have come to argue conditional contraband away altogether. There are, however, unmistakable signs of a change of opinion, judging by the discussions on the subject in the Institute of International Law, a body exclusively composed of recognised International Jurists. The rules this body adopted in 1896, though they do not represent the unanimous feeling of its members, may be taken as the opinion of a large proportion of them. In any case the majority comprised German, Danish, Italian, Dutch, and French specialists. The rules contain a clause which, after declaring conditional contraband abolished, states that:

"Nevertheless the belligerent has, at his option and on condition of paying an equitable indemnity, a *right of sequestration or pre-emption* as to articles (*objets*) which, on their way to a port of the enemy, may serve equally in war or in peace."

This addition was inserted at the suggestion of General den Beer Portugael, the chief Dutch authority on maritime law, whose own wording, of which the above text is a reduction, provided, furthermore, for the payment of the freight besides the value of the cargo, and for the adoption of the English proportion of 10 per cent. for loss of profit. The proposed rule, it is seen, goes beyond the directions of our Prize Act.[2] To become binding in its existing form, either an alteration of the text of the Declaration of Paris or a modification of the clause would be necessary, seeing that under the Declaration of Paris "the neutral flag covers enemy goods, except contraband of war."

In short it may be said that, in so far as the Continent is concerned, expert opinion is on the whole favourable to the recognition of conditional contraband, in the form of a *right of sequestration or pre-emption*, within the limits England has shown a disposition to set to it as against herself.

[1] The Admiralty *Manual* of Naval Prize Law (1888), after giving a detailed list of articles which are *absolutely contraband*, describes them rather ambiguously as "comprised" in some supposititious wider list, and then it adds that goods are *conditionally contraband* (a list of which is also given) "which may be presumed" to be "intended to be used for purposes of war," and that this presumption arises when the "hostile destination of this vessel is either the *enemy's fleet at sea* or a hostile *port used exclusively or mainly for naval or military equipment*."

Pre-emption is provided for by the Naval Prize Act, 1864, section 38 of which runs as follows:—

"Where a ship of a foreign nation passing the seas *laden with naval and victualling stores*, intended to be carried to a port of any enemy of Her Majesty, is taken and brought into a port of the United Kingdom, and the purchase for the service of Her Majesty of the stores on board the ship appears to the Lords of the Admiralty expedient, without the condemnation thereof in a Prize Court, in that case the Lords of the Admiralty may purchase, on the account or for the service of Her Majesty, all or any of the stores on board the ship; and the Commissioner of Customs may permit the stores purchased to be entered and landed within any port."

Thus, on the one hand, the provisions as to pre-emption go beyond the Admiralty restrictions as to intention and destination, and apply a penalty to mere carriage of conditional contraband to *any enemy port*; and practice, on the other, applies pre-emption generally, though the combined construction of the *Manual* and the Act involves an essential distinction. The attention of the draftsmen of the new *Manual* is called to this confusion.

[2] See note 1 above and p. 358.

As regards *coal*, there is no essential difference between the position of coal to feed ships and provisions to feed men. Neither are *per se* contraband. At the West African Conference in 1884 the Russian representative protested against its inclusion among contraband articles, but the Russian Government included it in its declaration as to contraband on the outbreak of the Russo-Japanese war.[1] In 1898 the Foreign Office replied to an inquiry of the Newport Chamber of Commerce on the position of coal that: "Whether in any particular case coal is or is not contraband of war, is a matter *primâ facie* for the determination of the Prize Court of the captor's nationality, and so long as such decision, when given, does not conflict with well-established principles of International Law, Her Majesty's Government will not be prepared to take exception thereto."

[1] In reply to an observation on the part of Lord Lansdowne as to this change of view, Count Lamsdorff stated that "it was permissible for the Russian Government to change their views since 1884, during which time many developments and circumstances had occurred which had induced them to modify their opinion. At the commencement of a war every belligerent had hitherto exercised the right of announcing what would be considered as contraband of war, and the list of such articles necessarily varied with the resources of the adversary. Such a right hitherto enjoyed by other Powers could not well be denied to Russia, and the fact that His Majesty's Government had refused to allow coal to be given to the Russian fleet in British harbours proved conclusively that they also regarded coal as contraband of war."—Sir C. Hardinge, *Sept.* 1, 1904.

The doctrine of *continuous voyages* gave rise during the Boer war to controversy with Germany, who at first declined to recognise the existence of any rule which could interfere with trade between neutrals, the German vessels in question having been stopped on their way to a neutral port. Prince von Bülow, in his explanatory speech in the Reichstag of January 19, 1900, however, qualified his protest. "I should wish," he said, "to take this opportunity of observing that we strove from the outset to induce the English Government, in dealing with neutral vessels consigned to Delagoa Bay, to adhere to that theory of International Law which guarantees the greatest security for the principle that for ships, consigned from a neutral State to a neutral port, the notion of contraband of war does not exist. To this the English Government demurred. We have not insisted, but reserved to ourselves the right of raising this question in the future, on the one hand, because it was essential to us to arrive at an expeditious solution of the pending difficulty, and on the other, because, in point of fact, the principle, here set up by us, has not yet met with universal recognition in theory and practice."

Trade between neutrals has, it is quite true, a *primâ facie* right to go on, in spite of war, without molestation. But if the ultimate destination of goods, though shipped first to a neutral port, is enemy's territory, then, according to the doctrine of "continuous voyages," the goods may be treated as if they had been shipped to the enemy's territory direct. The doctrine is entirely Anglo-Saxon in its origin and development. Only in

one case does it seem ever to have been actually put in force by a foreign Prize Court, namely, in the case of the *Doelwijk*, a Dutch vessel which was adjudged good prize by an Italian Court on the ground that, although bound for Djibouti, a French port, it was laden with a provision of arms of a model which had gone out of use in Europe, and could only be destined for the Abyssinians, with whom Italy was at war. Here, again, continental opinion is no longer universally antagonistic to the British view. When the subject was under discussion in the Institute of International Law in 1896, the only person who raised an objection to the principle of the doctrine was the distinguished French authority on maritime law, the late M. Desjardins, who declined to acknowledge that any theory of continuous voyages was known or, consistently with the existing law of neutrality, could be known to International Law; though he admitted that the penalties of contraband would be incurred if the shipping to a neutral port were effected merely in order "to deceive the belligerent as to the real destination of the cargo." He proposed to acknowledge the doctrine only to this extent. Professor Fusinato, an eminent Italian deputy, who has since held the post of Italian Under-Secretary for Foreign Affairs, supported by two Italian Professors of International Law, Professors Catellani and Buzzati, argued against M. Desjardins' proposal that it would exclude the contingency of goods shipped to a neutral port, not for the purpose of defrauding the belligerent, but for that of being ultimately delivered to a belligerent not in possession of a seaport. Eventually the Institute adopted the following rule:

"Destination to the enemy is presumed, where the shipment is to one of the enemy ports, or to a neutral port, if it is unquestionably proved by the facts that the neutral port was only a stage (*étape*) towards the enemy as the final destination of a single commercial operation."

The late Professor Perels, Director of the German Admiralty, submitted a project not essentially different from this. His wording of the final restriction was as follows: "The hostile destination must be determined with certainty, with due regard to special circumstances and by a close examination of the ship's documents."

Thus the consensus of learned opinion throughout Europe seems favourable to the adoption of the two Anglo-Saxon rules of "pre-emption" and "continuous voyages." The view of the German Government seems not to be that of their late eminent legal adviser in maritime matters, but this may only be an impression produced by the controversial warmth of the Chancellor.

## NOTE ON CONTROVERSY BETWEEN THE BRITISH AND RUSSIAN GOVERNMENTS AS TO DEFINITION OF *CONTRABAND*

Under the Rules which the Russian Government issued at the beginning of the war with Japan (February 14, 1904), the following articles were "deemed to be contraband of war":

Art. VI.—(1) Small arms of every kind, and guns, mounted or in sections, as well as armour-plates;

(2) Ammunition for firearms, such as projectiles, shell-fuses, bullets, priming, cartridges, cartridge-cases, powder, saltpetre, sulphur;

(3) Explosives and materials for causing explosions, such as torpedoes, dynamite, pyroxyline, various explosive substances, wire conductors, and everything used to explode mines and torpedoes;

(4) Artillery, engineering, and camp equipment, such as gun carriages, ammunition waggons, boxes or packages of cartridges, field kitchens and forges, instrument waggons, pontoons, bridge trestles, barbed wire, harness, etc.;

(5) Articles of military equipment and clothing, such as bandoliers, cartridge boxes, knapsacks, straps, cuirasses, entrenching tools, drums, pots and pans, saddles, harness, completed parts of military uniforms, tents, etc.;

(6) Vessels bound for an enemy's port, even if under a neutral commercial flag, if it is apparent from their construction, interior fittings, and other indications that they have been built for warlike purposes, and are proceeding to an enemy's port in order to be sold or handed over to the enemy;

(7) Boilers and every kind of naval machinery, mounted or unmounted.

(8) Every kind of fuel, such as *coal*, naphtha, alcohol, and other similar materials.

(9) Articles and material for the installation of telegraphs, telephones, or for the construction of railroads.

(10) Generally, everything intended for warfare by sea or land, as well as *rice*, *provisions*, and horses, beasts of burden, and other animals, *which may be used for a warlike purpose, if they are transported on the account of, or are destined for, the enemy.*

In answer to an inquiry by Lord Lansdowne, Sir C. Scott telegraphed from St. Petersburg (March 7, 1904) the following further official declaration of the Russian Government:

All the articles enumerated in Art. VI. of the Rules . . . amongst which coal is included, are regarded as unconditionally contraband of war by the Imperial Government. With respect to section 10, its sense is confined to this—that the Imperial Government, if they should judge it indispensable in the circumstances of the war to forbid the conveyance of such articles to Japan or to Japanese armed forces, reserve to themselves the right to supplement the list of contraband articles by the addition of others.

The "Official Messenger," a few days later (March 18, 1904), published instructions to Commanders of warships, in which additions were made to section 10 of Art. VI., so as to include under *foodstuffs* and forage, all kinds of grain, fish, fish products, beans, bean-oil, and oilcakes. To the list of remaining articles intended for war were added machinery and parts thereof intended for the manufacture of cannons, small-arms, and projectiles.

A further Imperial Order on April 21, 1904, added *cotton* to the list of absolute contraband.[1]

The protests of Great Britain led to the reference of the subject by the Russian Government to a Departmental Committee, the result of whose deliberations was the issue on October 22, 1904, of the following rectifying notice:

> In consequence of doubts which have arisen as to the interpretation of Art. VI., section 10, of the Regulations respecting Contraband of War, it has been resolved by the Imperial Government that the articles capable of serving for a warlike object, in regard to which no decision has been taken, including rice and foodstuffs, shall be considered as contraband of war, if they are destined for—
>
> The Government of the belligerent Power; for its administration; for its army; for its navy; for its fortresses; for its naval ports; or for its purveyors.
>
> In cases where they are addressed to private individuals, these articles shall not be considered as contraband of war.
>
> In all cases horses and beasts of burden shall be considered as contraband of war.

The original Order went far beyond what had been hitherto accepted as the description of contraband.

The British view is that the term "contraband of war" includes only articles having a belligerent destination and purpose. Such articles, in the Instructions to British officers, are classed under two heads:

1. Those primarily and ordinarily used for military purposes in time of war, *e.g.* arms and munitions of war, military material, etc.—described as "absolutely contraband."

2. Those used for peaceful or warlike purposes according to circumstances, and described as conditionally contraband.

Articles of the first class destined for ports of the enemy or places occupied by his forces are always contraband of war. Articles of the second class are contraband of war only when destined for the military or naval forces of the enemy. *Coal* and *provisions* are among the articles which are only conditionally contraband.

In his despatch to St. Petersburg of June 1st, 1904, Lord Lansdowne expressed the surprise with which the British Government learnt that rice and provisions were to be treated as unconditionally contraband—"a step which they regarded as inconsistent with the law and practice of nations." While thus protesting in regard to this particular category of so-called contraband of war, the British Government "felt themselves bound to reserve their rights by also protesting against the doctrine that it is for the belligerent to decide what articles are as a matter of course, and without reference to other considerations, to be dealt with as contraband of war, regardless of the well-established rights of neutrals"; nor would the British Government consider itself bound to recognise as valid the decision of any Prize Court which violated those rights. It did not dispute the right of a belligerent to take adequate precautions for the purpose of preventing contraband of war, in the hitherto accepted sense of the words, from reaching the enemy; but it objected to the introduction of a new doctrine under which "the well-understood distinction between conditional and unconditional contraband was altogether ignored, and under which, moreover, on the

[1] On remonstrance by the British Ambassador, Count Lamsdorff remarked that, in the absence of any international decision as to what was or was not contraband of war, it appeared to be within the power of a belligerent to arbitrarily decide what articles were to be so considered (June 13, 1904).

discovery of articles alleged to be contraband, the ship carrying them was, without trial and in spite of her neutrality, subjected to penalties which are reluctantly enforced even against an enemy's ship." [1]

Lord Lansdowne stated the British Government's attitude more fully as regards the inclusion of *rice* and *provisions* as absolute contraband, "a step which they regard as inconsistent with the law and practice of nations," in the following terms:

"His Majesty's Government do not contest that, in particular circumstances, provisions may acquire a contraband character, as, for instance, if they should be consigned direct to the army or fleet of a belligerent, or to a port where such fleet may be lying, and if facts should exist raising the presumption that they are about to be employed in victualling the fleet of the enemy. In such cases it is not denied that the other belligerent would be entitled to seize the provisions as contraband of war, on the ground that they would afford material assistance towards the carrying on of warlike operations. His Majesty's Government could not, however, admit that if such provisions were consigned to the port of a belligerent (even though it should be a port of naval equipment) they should therefore be necessarily regarded as contraband of war. In the view of His Majesty's Government the test appears to be whether there are circumstances relating to any particular cargo to show that it is destined for military or naval use. His Majesty's Government desire to point out that the decision of the Prize Court of the captor in such matters, in order to be binding on neutral States, must be in accordance with recognized rules and principles of international law. His Majesty's Government feel themselves bound to reserve their rights by protesting against the doctrine that it is for the belligerent to decide that certain articles, or classes of articles, are as a matter of course, and without reference to the considerations referred to in the earlier portion of this despatch, to be dealt with as contraband of war regardless of the well-established rights of neutrals; and His Majesty's Government could not consider themselves bound to recognise as valid the decision of any Prize Court which violated those rights, or was otherwise not in conformity with the recognised principles of international law" (June 1, 1904).

The British Ambassador (Sir C. Hardinge) in reply wrote (September 16, 1904) that, owing to the decision of the above-mentioned Commission, which had been formed under the Presidency of Professor F. de Martens to study the question of contraband, supplementary instructions had been issued to the Naval Commanders and to the Naval Prize Courts defining the interpretation of section 10 of Article VI. of the Russian rules which, the Commission were of opinion, had in some cases been misinterpreted. According to the instructions now issued, the conditionally contraband nature of articles used for peaceful or warlike purposes, according to circumstances and included under section 10 of Art. VI., was admitted, but the Russian Government could not admit that articles of dual use when addressed to private individuals in the enemy's country should be necessarily free from seizure and condemnation, since provisions and such articles of dual use, though intended for the military or naval forces of the enemy, would obviously under such circumstances be addressed to private individuals (possibly agents or contractors for the naval or military authorities) and not to the Government, thus defeating the object of the regulations.

In answer to a question by the British Ambassador, the Russian Foreign Minister (Count Lamsdorff) agreed that in the event of the seizure of articles of a conditionally contraband

[1] See section 40 of Russian Instructions on Procedure in Stopping, Examining, and Seizing Merchant Vessels, published in *London Gazette* of March 18, 1904.

nature addressed to private individuals in the enemy's country, the burden of proof would necessarily rest with the captor, observing, however, "that it would be equally to the advantage of the owner of the articles in question to disprove the charge that they were destined for the military or naval forces of the enemy."

Lord Lansdowne in answer stated that—

> While H.M. Government do not contend that the mere fact that the consignee is a private person should necessarily give immunity from capture, they hold, on the other hand, that to take vessels for adjudication merely because their destination is the enemy's country would be vexatious, and constitute an unwarrantable interference with neutral commerce. To render a vessel liable to such treatment there should, in the opinion of His Majesty's Government, be circumstances giving rise to a reasonable suspicion that the provisions are for the enemy's forces, and it is in such a case for the captor to show that the grounds of suspicion are adequate, and to establish the fact of destination for the enemy's forces before attempting to procure their condemnation (September 30, 1904).

As regards *cotton*, explanations were given (May 18, 1904) that the prohibition of cotton as contraband of war applied only to raw cotton suitable for the manufacture of explosives, and not to yarn or tissues. "The object of the prohibition was to prevent the importation of an article which could be used for the manufacture of munitions of war, and as it was impossible to distinguish between the cotton imported for innocent purposes and cotton imported for use as munitions of war, it had been found necessary to issue the proclamation in question. There was no intention of introducing a new doctrine of contraband of war."[1]

[1] Sir C. Hardinge in this connection pointed out to Count Lamsdorff (St. Petersburg, October 9, 1904) that British India is by far the largest importer of raw cotton into Japan, the quantities imported in 1901 and 1902 being more than double those imported from the United States of America or from any other country, while the value of raw cotton sent to Japan from India in each of the above-mentioned years amounted to nearly 40,000,000 roubles, and one-half of the total value of all the cotton imported into Japan. The quantity of raw cotton that might be utilised for explosives would be infinitesimal in comparison with the bulk of the cotton exported from India to Japan for peaceful purposes, and to treat harmless cargoes of this latter description as unconditionally contraband would be to subject a branch of innocent commerce, which is specially important in the Far East, to a most unwarrantable interference.

# XIV

# DESTRUCTION OF PRIZES

THE destruction by the Russian Fleet in the Far East of a number of captured neutral vessels without trial by a Prize Court, gave rise to a serious controversy between the British and Russian Governments.

The Russian contention was that "the captor of a neutral ship is within his rights if he sinks it, for the reason that it is difficult, or impossible, for him to convey it to a national port for adjudication by a Prize Court," or even inconvenient to do so, "because of the distance of the port to which the vessel should be brought," or because "her conveyance to such a port would take too much time or entail too great a consumption of coal," or because the "captor has not at his disposal a sufficient number of men from whom to provide a crew for the captured vessel." "The effects of a consistent application of these principles," Lord Lansdowne pointed out, "would justify the wholesale destruction of neutral ships taken by a vessel of war at a distance from her own base, upon the ground that such prizes had not on board a sufficient amount of coal to carry them to a remote foreign port,—an amount of coal with which such ships would probably in no circumstances have been supplied. They would similarly justify the destruction of every neutral ship taken by a belligerent vessel which started on her voyage with a crew sufficient for her own requirements only, and was therefore unable to furnish prize crews for her captures." "The adoption of such measures by the Russian Government could not fail to occasion a complete paralysis of all neutral commerce" (Foreign Office, Aug. 10, 1904).

During the Chinó-Japanese War a somewhat similar controversy arose out of the sinking by a Japanese commander of the *Kow-Shing*, a British vessel carrying Chinese troops to the (or the prospective) seat of war. The issue was complicated in the *Kow-Shing* case by a doubt as to whether a state of war existed, warranting the arrest or capture of a neutral vessel on the High Sea. Assuming, however, that a state of war did exist, the circumstances were that the neutral vessel was carrying enemy troops to the seat of war. The Japanese commander ordered the vessel to follow her to Japan; but "it was found after long negotiations that the ship was not able to proceed to Japan, because the Chinese on board resisted the Japanese orders, which the captain himself wished to obey. . . . The *Kow-Shing* was thus," says Professor Takahashi, "rendered unnavigable by a cause more potent than winds or waves. Moreover, considering the position of the enemy's fleet at the time, the recapture of the *Kow-Shing* was very probable."[1] The case was exceptional, owing to the material fact that the Chinese troops on board prevented the commander of the captured vessel from carrying out the captor's orders, and the captor was placed between the alternatives of sinking the ship or allowing the enemy troops to continue their journey.

[1] *Cases on International Law during the Chino-Japanese War*, Cambridge, 1899, p. 47.

In the case of the British vessels sunk by their Russian captors, there was no resistance. They were sunk on grounds of convenience, the strongest being that the alternative would have been to release them, and to release them would have been to allow their contraband cargoes to reach their destination.

In principle, there is no difference between ships carrying absolute contraband and ships carrying enemy troops.

The subject was dealt with by the *Institute of International Law* in 1887, when, after long and repeated discussions, the

right to sink the captured vessel was confined to the case of the prize being an enemy vessel and the original clause relating to neutral vessels, viz.: "Such right, that of sinking, is exceptionally allowed to the captor in case of the prize being a neutral condemnable ship (*navire neutre condamnable*)," was suppressed.

The rules adopted by the Institute in their scheme of *Prize Regulations* then became as follows:

> Art. L.—The captor shall be allowed to burn or sink the *enemy ship* captured, after having transferred on board the capturing ship all persons on board the enemy ship, as well as the cargo in so far as this is possible, and after the commander of the capturing ship shall have taken into his custody all papers relating to the captured ship, and all things which might be of importance for the judicial inquiry and for any claims for damages on the part of the owners of the cargo, in the following cases:
>
> 1. When it is not possible to keep the ship afloat in view of her defective condition and the stormy state of the sea;
> 2. When the ship sails so badly that it is impossible for her to follow the capturing ship, and she might be easily recaptured by the enemy;
> 3. When on the approach of a stronger enemy fleet there may be danger of the ship being recaptured;
> 4. When the capturing ship is unable to place on the captured ship a sufficient crew, without diminishing her own crew beyond that which is necessary for her own safety;
> 5. When the port to which it is possible to take the captured ship is too distant.

The difficulty, however, is not overcome by the exclusion of neutral ships, and the rules enunciated by the Institute are merely the current practice which the belligerent may be trusted to follow in his own interest.

The dilemma arises where the belligerent is placed between the alternatives I have pointed out in respect of neutral ships. The only feasible solution seems to be to distinguish between different kinds of cargo, innocent and guilty, and between ships carrying absolute contraband and those carrying conditional

contraband. The sinking of the latter would be contrary to the elementary principles of justice where a doubtful case is concerned. On the contrary, ships carrying articles of direct use in war to the enemy, may be held to have forfeited their right to be treated as neutral. The question of any possible mistake and consequent right to an indemnity, of course, would be dealt with by the Prize Court.

Moreover, it must not be forgotten that innocent neutral cargo on board an enemy ship is under the protection of the Declaration of Paris (1856).[1]

The suggestions on the subject I have drawn up[2] endeavour to take into account the different points which have to be considered.

[1] See text of the Declaration, p. 291. It is significant that, in spite of the Declaration of Paris, necessity of war has been held to justify the destruction of neutral property on an enemy's merchant vessel even without compensation. Thus, in 1870, the French cruiser *Desaix* captured the German vessels the *Ludwig* and the *Vorwaerts* and burned them on the day of capture. Part of the cargo of these vessels belonged to British subjects (neutrals). The owners claimed compensation, but the *Conseil d'État* held that, though the Declaration of Paris exempts the goods of a neutral on board an enemy's ship from confiscation, and entitles the owner to the proceeds in case of a sale, yet it gives him no claim to compensation for any damage resulting from the lawful capture of the ship, or from any subsequent and justifiable proceedings of the captors (Wheaton, p. 493—Dalloz, *Jurisprudence Générale*, 1872, Pt. III. p. 94).

Hall (*International Law*, p. 722), commenting on the above case, says: "It is to be regretted that no limits were set in this decision to the right of destroying neutral property embarked in an enemy's ship. That such property should be exposed to the consequences of necessary acts of war is only in accordance with principle, but to push the rights of a belligerent further is not easily justifiable, and might under some circumstances amount to an indirect repudiation of the Declaration of Paris. In the case, for example, of a State the ships of which were largely engaged in carrying trade, a general order given by its enemy to destroy instead of bringing in for condemnation would amount to a prohibition addressed to neutrals to employ as carriers vessels the right to use which was expressly conceded to them by the Declaration in question. *It was undoubtedly intended by that Declaration that neutrals should be able to place their goods on board belligerent vessels without as a rule incurring further risk than that of loss of market and time, and it ought to be incumbent upon a captor who destroys such goods together with his enemy's vessel to prove to the satisfaction of the Prize Court, and not merely to allege, that he has acted under the pressure of a real military necessity.*"

The italics are mine. If the captor does not succeed in proving the existence of a real military necessity, what then? An indemnity is the only remedy. Is not, according to the universal notion of equity, an indemnity due for loss of market and time? I do not see on what my late able friend relied for his restriction. The Declaration of Paris, in declaring that neutral goods on board an enemy ship are "not liable to capture," imposes no limitation of the kind he mentions.

[2] See p. 165.

# XV

# MAIL SHIPS

A MAIL ship occupies a distinctly different position from an ordinary cargo ship. To hold it up and delay the delivery of general correspondence is a more serious matter than to stop a cargo which can be insured against the risk of delay. On the arrest of the German mail steamers *Bundesrath* and *General* during the South African War, the German Government represented to the British Government that "it was highly desirable" that steamers flying the German mail-flag should not be stopped, and the British Government thereupon issued orders not to stop them on suspicion only (Parl. Papers: Africa, No. 1, 1900). This was a step towards assimilating mail steamers to public ships.

The question of the status of mail ships was again raised during the Russo-Japanese War on the arrest by the *Smolensk* of the German mail steamer *Prinz Heinrich*. In this case the whole mail was seized, a part (two bags for Japan) was confiscated, and the rest sent on after considerable delay.[1]

[1] The German Government does not seem to have disputed that belligerents are entitled to exercise the right of visit and search in the case of mail steamers, but to have confined itself to protesting against the confiscation of the mails. The Russian Government seems to have acquiesced in the German claim to immunity of the mails. See *Times*, July 18(?) 1904.

It is not likely that any Government would take the responsibility of guaranteeing that mail ships carry neither contraband cargo nor war despatches.

Inspection by the belligerent consular agents at the port of departure, or official certification by the neutral authorities of ships' and cargo documents may be considered as a possible check.[2]

[2] See Chap. IX. *in fine*, p. 72.

There is, however, the profound difference between a mail-ship and a warship, that the one is doing chiefly private work for hire and the other is not; that the one is a mercantile profit-earning venture, and the other is entirely under the control of a responsible Government. Assimilation in fact is, therefore, impossible.

In the tentative forms of arrangement for neutrality[1] and mail ships[2] I have drawn up, I have endeavoured to circumvent difficulties rather than to impose on Governments duties which might involve them in expensive conflicts, if they undertook to guarantee either the cargoes or the contents of mail-bags.

[1] See p. 160.

[2] See p. 170.

The chief point in this, as in practically all matters exposing States to conflicts, is to avoid uncertainty, and leave as little as possible to the discretion of the belligerent by taking advantage of the great change due to sailing speed and electricity, which has transformed the relations of nations with each other, and made it possible to include warnings and notice, at one time necessarily mere accessories, as the essential factors in modern arrangements.

# XVI

# AN INTERNATIONAL PRIZE COURT

THE proposal to submit captures to a special international jurisdiction has often been made,[1] and in fact it suggests itself, whenever there are two opinions concerning the justice of a Prize Court's decision.

The Institute of International Law some years ago (1887) after adopting a very full code of Prize Law, consisting of no fewer than 122 Articles and covering every branch of the subject, forwarded them to the different European Governments, with the expression of a wish that "in the future reform might take a still more complete shape by the institution of an International Tribunal for the trial of prize cases." The recommendation arose out of a proposal made to the Institute in 1876 by Mr. Westlake to form a Commission "for the examination of a project to organise an International Prize Court."

In 1877 the Institute adopted the following resolutions :—

"L'Institut déclare que le système actuel des tribunaux et de l'administration de la justice en matière de prises est défectueux, et considère comme urgent de porter remède à cet état de choses par une nouvelle institution internationale. Il est d'avis qu'il y a lieu :

"1. De formuler par traité les principes généraux en matière de prises ;

"2. De remplacer les tribunaux jusqu' ici exclusivement composés de juges appartenant à l'Etat belligérant par des tribunaux internationaux qui donnent aux particuliers intéressés de l'Etat neutre ou ennemi de plus amples garanties d'un jugement impartial ;

"3. De s'entendre sur une procédure commune à adopter en matière de prises.

"Toutefois l'Institut croit devoir déclarer que dès à présent il considérerait comme un progrès l'institution de tribunaux mixtes soit de première instance, soit d'appel, sur les bases du projet élaboré par M. Westlake."

Later on, when the code of prize regulations was drawn up by the Institute, the proposal was narrowed down to the suggestion of an International Appeal Court only.

[1] A question on the subject was put on February 19, 1907, by Mr. A. Herbert, who asked "whether the Government will instruct the British representatives at the forthcoming Hague Conference to press upon the Powers the adoption of an international agreement providing for an ultimate appeal from all Prize Courts to The Hague Tribunal." Sir H. Campbell-Bannerman replied : "This subject is not one of those expressly included in the Russian programme, but it will not be lost sight of, and has, in fact, already been mentioned by H.M. Government as a subject which might be included. I cannot, however, make statements about the instructions to be given to the British representatives as long as discussions about the programme are still proceeding."

The subject was brought up at the session in 1905 at Christiania of the International Law Association by M. Marais, advocate at Rouen, M. Thorvald Boye, of Christiania, and Mr. Pawley Bate, Lecturer at the Inns of Court. The discussion showed that there is much to be said on both sides. Mr. Justice Phillimore *inter alios* seemed favourable to the institution of an independent Court of Appeal, but not to one of first instance.

The question requires careful consideration.

Sir William Scott, in the case of the Swedish ship *Maria*, in 1799 (1 Rob. 349), prefaced his judgment by the following fine vindication of judicial impartiality in prize cases:—

"In forming my judgment," he said, "I trust it has not escaped my anxious recollection for one moment of what it is that the duty of my station calls for from me; namely, to consider myself as stationed here, not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out without distinction to independent States, some happening to be neutral and some belligerent. The seat of judicial authority is indeed locally here in the belligerent country according to the known law and practice of nations; but the law itself has no locality. It is the duty of the person who sits here, to determine this question exactly as he would determine the same question if sitting at Stockholm: to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and impose no duties on Sweden as a neutral country which he would not admit to belong to Great Britain in a similar character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered, as the universal law upon the question; a question regarding one of the most important rights of belligerent nations relatively to neutrals."

Nevertheless, under the present practice, a defeated defendant in a prize suit generally feels that his position might have been more impartially considered by a judge unconnected with the country of either litigant.

Yet, is it certain that a stricter or more impartial justice would be meted out by a Court constituted otherwise than at present?

Justice is, in itself, rather an ideal than a reality, as is sufficiently proved by the large number of cases which are reversed on appeal, not only in England, but in every country of Europe. The necessity of adopting procedure to bring cases to an end, the necessary uncertainty of evidence, the fact that a decision *must* be given upon the evidence forthcoming, whether complete or not, the different temperaments and prejudices, inherent to our faulty human nature, of both judges and advocates, their differing degrees of ability, circumstances, pressure of business, accidents of procedure, all tend to qualify, impede, and distort justice, as given in courts of law. In practice, the least among these shortcomings is, probably, the partiality of the judge. Indeed, it is only in a special court, outside the turmoil of ordinary litigation, where the procedure is calm and leisurely, and there is nothing to prevent a full and careful examination of the facts, that the judge's possible bias might become of any importance among the possibilities.

Let us examine, however, how this bias may affect a prize suit.

In such a suit the captor is a belligerent ship and the prize property belongs to the subject of a neutral State.

The interests of the civilised world in time of war are divisible into three groups, namely, the respective interests of the two belligerents and the interests of the neutrals. In practice the interests of the neutrals are against the making of captures. Under the system hitherto prevailing, it is the judge appointed by the captor who decides whether the capture was a legitimate one or not. He hears the cause and gives his judgment in the face of the whole neutral world, at all times the larger part of civilised mankind, and one which has now much greater facilities for making its voice heard than it had a century ago, when a powerful belligerent maritime State was, out of all proportion to any neutral combination, able to enforce its views as regards neutral property. This change, by the way, was recently exemplified in the case of the *Bundesrath*, when a neutral Power, of no great maritime strength, dictated to some extent to the most formidable maritime State in the world the way in which it ought to deal with neutral merchant ships on the high seas, and claimed and obtained what were practically penal damages for the stoppage of a ship, though effected in accordance with the rights of warfare, as hitherto practised.

Let us now assume that the case were being judged by an International Court. The International Court could only be composed of jurists, belonging either to both belligerents and neutrals, or to one belligerent and neutrals, or to neutrals exclusively. Whichever of these alternatives should be chosen, the decision would obviously always be with the neutral judge or judges, in the last resort. In this respect there is not much to distinguish as between Courts of First Instance and Courts of Appeal, and the question is whether the neutrals might not be as much subject to bias against the belligerent States as the judges of belligerent States are assumed to be biassed at present against neutral Powers. The check of a specially interested belligerent public opinion would obviously be less effective than that of a general neutral opinion in the reverse case. It would not make much difference that the neutral judges were of different countries, as the neutral interest is in principle homogeneous. In an International Court, in fact, the only difference would possibly be that the bias instead of being against the neutral would be against the belligerent.

Prince von Bülow has been credited with suggesting in his correspondence on the question of the *Bundesrath* that a tribunal of arbitration should be instituted to deal with all questions of capture. At any rate, on January 19, 1900, he wrote that the German Government had proposed that all the points then in dispute should be submitted to arbitration. The British Government declared their concurrence in the institution of a tribunal to arbitrate upon the claims for compensation.[1] Whether this bears the construction a writer in the *Times* of January 25, 1900, placed upon it as being in favour of arbitration in prize cases generally, I think is open to doubt; but, if it does, the suggestion that the "interests of neutrals have been neglected, and that rarely have damages been awarded to them even when vessels were released," will have to be carefully examined. That Sir William Scott should have condemned the captors in costs and damages "in only ten or a dozen cases, not one in a thousand," is obviously not in itself a proof of his injustice or bias.

[1] See a suggested clause in this sense, p. 167.

A clearer understanding of neutral obligation, and a stricter enforcement of it by domestic legislation, — especially the adoption of the suggestions made in Chapters IX., X., and XV., and, on the other hand, international undertakings, leaving as little as possible to the discretion of prize judges,[2]—would tend to prevent breaches of neutrality, and possibly to eliminate doubtful cases altogether.

[2] A restrictive definition of contraband of war, such as proposed in Chapter XIII. and Draft No. 10, and the abolition of constructive notice of blockade as proposed in Draft No. 9, would much simplify prize cases.

# XVII

# ASSIMILATION OF PRACTICE RELATING TO TERRITORIAL WATERS

No branch of International Law is in a more unsatisfactory condition than that of the rights and duties arising out of the possession and user of the margin of sea, along the coast-line of States, called "Territorial Waters." No general understanding has yet been arrived at on such an essential matter as the width of the margin, and even the nature of the dominion the adjacent State is entitled to exercise is still the subject of controversy.[1]

In the Franconia Case (R. *v.* Keyn, 1876, 2 Ex. D. 63, and 46 L. J. Rep. M.C. 17), the Court for the Consideration of Crown Cases Reserved held by a majority of 7 against 6, that the Central Criminal Court had no jurisdiction to try offences by foreigners on board foreign ships though committed within the limit of three miles from the shore. This decision led to the adoption of the Territorial Waters Jurisdiction Act (41 and 42 Vict. c. 73, 1878), by which it was enacted that an offence committed by any person on the open sea within the territorial waters of Her Majesty's dominions, although committed on board or by means of a foreign ship, was within the British jurisdiction.[2]

This enactment has been much criticised by foreign jurists as involving a claim to jurisdiction over passing vessels not consistent with the actual practice of nations.

As regards the three miles' margin which England, France, and the United States are agreed to respect among themselves, several other States, including Germany, have never agreed to consider it as finally settled for purposes of general jurisdiction, although the international Fisheries Convention of May 6, 1882, has adopted the limit as among the States, except Norway, bordering on the North Sea for fishery purposes.[3] A British Fisheries Commission in 1893 reported, after a long inquiry as regards the preservation of fish on the coast of Great Britain, that the present territorial limit of three miles was insufficient, and that for fishery purposes

[1] A question which might be raised in circumstances which have not yet arisen is the extent of the sovereignty of the adjacent State in case of tunnelling beneath the sea. The analogies are favourable to the recognition of the right of the adjacent State to exercise its sovereignty under the sea-bed to the point at which it meets another State equidistant from the coast. The nearest analogy is the case of rivers over which adjacent States exercise jurisdiction to any equidistant dividing line (Thalweg). See the present writer, "Channel Tunnel," *Westminster Review*, Feb. 1907.

[2] Lord Halsbury, who passed the Act through the House of Commons, speaking of it on May 6, 1895, observed "that care was taken at the time to avoid measurements. The distance was left at such limit as was necessary for the defence of the Realm. Then the exact limit was given for the particular purpose in view."

[3] In the discussion of May 6, 1895, on the Sea Fisheries Regulation (Scotland) Bill (afterwards 58 & 59 Vict. ch. 42, see Appendices) Lord Salisbury (not then in office) observed :—

"As long as the coast is open there is no doubt that three miles is the limit of territorial waters, but when the coast is folded and doubled as it is in parts of Scotland, there come in a different set of traditions which belong to diplomatic law, and I may say that it is an unsettled question in international law how far the territorial waters extend. The discussion we have had in regard to Newfoundland, the Behring Sea and to other parts of the world, show that where the coast is not straight, but makes an angle, there the limit of the territorial waters is not so fixed . . . Lord Chancellor Herschell, on the other hand, stated that he was far from saying that three miles was to be the limit of territorial waters for all time. . . . As regards bays, see an interesting paper by Mr. A. H. Charteris, of the University of Glasgow, read at the Berlin (October 1906) meeting of the International Law Association.

The decision of the High Court of Justiciary of Scotland in Mortensen *v.* Peters (July 20, 1906) has raised the question of whether an Act of Parliament, conferring jurisdiction over any of the (under International Law) High Sea, is binding on non-British persons. The Court held that effect had to be given to the exact terms of the Act (Sea Fisheries Regulation (Scotland) Act, 1895)—that distinctions could not be made which were not made in the Act itself. Comp. Lord Chancellor Halsbury's observations in Cook *v.* Sprigg (1899). See p. 50 (note). In the judgment in Mortensen *v.* Peters, Lord Kyllachy observed :—"There is certainly nothing in the Convention which in the least conflicts with the right of the several contracting nations to impose, each of them within its territorial limits (whatever these are), restrictions universally applicable against injurious practices or modes of fishing, such as are by this statute and by-law imposed here."

The case in question, it may be mentioned, "concerned a Norwegian trawler or rather one of a fleet of trawlers maintained by English capital, but registered in Norway to evade the statute and enable them to fish habitually in the Moray Firth." "Foreign Trawlers and Territorial Waters," *Blackwood*, March 1907, p. 431.

this limit should be extended, provided such extension could be "effected upon an international basis, and with due regard to the interests and rights of all nations." No attempt has been made by the British Government to carry out this recommendation. It must not be forgotten that any broadening of the national margin would mean a corresponding curtailment of the international fishing area.[1] The subject had already attracted the attention of English jurists, and, at the London meeting in 1887 of the Association for the Reform and Codification of the Law of Nations (now the International Law Association), a Committee was appointed to make a full inquiry into the subject. The year following the Institute of International Law also took up the subject. Both bodies[2] published exhaustive reports on evidence obtained as to prevailing usages in all parts of the world. The inquiries of these two bodies resulted in the adoption in 1894 of a number of rules, drafted by the present writer, first by the Institute and, later on in the same year, by the Association. The rules adopted were brought by the Dutch Government, in 1896, to the knowledge of the leading European Governments, who were at the same time sounded as to holding a conference for the purpose of dealing with the question officially. The correspondence was afterwards published by the Dutch Government. The refusal of Lord Salisbury, then Foreign Secretary, resulted in the matter being dropped. In 1903 (March 12), Mr. J. W. Crombie asked Lord Cranborne, Under Secretary of State for Foreign Affairs, in the House of Commons, "whether he was aware that the Dutch Government some four years ago brought to the notice of His Majesty's Government certain resolutions passed by the Institute of International Law, and confirmed by the International Law Association, of which the Lord Chief Justice is president, and proposed to call a conference of European Powers to reconsider the existing rules applicable to the limits of territorial waters for fishing purposes, and, seeing it was owing to the refusal of His Majesty's Government to take part in it that the conference fell through, whether he would now reconsider the advisability of promoting this conference."

Lord Cranborne answered:—

"No such proposals were made at the time mentioned. But in 1895 the Dutch Government consulted Great Britain and other maritime Powers on the expediency of calling together a conference for the purpose of determining in a uniform manner for all nations the distance of the limit of territorial waters from the shore. The limit was not to be discussed only with reference to fisheries. His Majesty's Government, and, we believe, other Governments concerned, were of opinion that no advantage would be gained by opening such a discussion, and, as far as I am aware, nothing has since occurred to modify that opinion."

The answer given by Lord Cranborne was correct in so far as that there was no proposal to limit the discussion to fisheries,

[1] See p. 111, note 2.

[2] The present writer was Convener of both Commissions. His reports on the subject will be found in the *Annuaire de l'Institut de Droit International* for the years 1892 and 1894 and in the Report of the *International Law Association* for 1894. A further and exhaustive monograph by him, bringing the subject down to 1903, will be found in the proceedings of the *Association Internationale de la Marine*. The grounds of the distinction, adopted by both the Institute and the Association of International Law, between the limits of territorial waters necessary for the purposes of neutrality and rights of defence and those requisite for fishery purposes, proposed by the Convener, are fully set out in these reports.

See also an excellent treatise on the subject of Territorial Waters generally, Prof. Stoerk in Holtzendorff's *Handbuch des Volkerrechts*.

but it is not quite correct in its assumption that other Governments were of the same opinion as the British Government. The replies of other Governments were shortly as follows:—The United States Government was not disinclined to adhere, if a number of other Powers also adhered. The German Government thought that the question was not yet ripe to be settled by an International Convention, but was disposed to deal with existing difficulties by separate arrangements. The Russian Government was favourable to the proposal, and promised to attend the conference if the principal maritime Powers accepted the invitation also. The answer of the Spanish Government was practically the same, and the Portuguese Government accepted unconditionally.

It is true that the Dutch Government placed the matter before the Governments of Europe in a way that seemed to pledge them to accept an extension of the width of the margin from three to six miles, and Lord Salisbury's objection may have been chiefly to this widening of the zone.

New considerations have arisen out of the Russo-Japanese war, especially in connection with the laying of floating mines and mine fields;[1] and the distinction made in the Institute and Association rules between the zone necessary for the protection of fishery rights and that necessary in time of war for the protection of the neutral coast-line and coast traffic, seems to have been amply justified by subsequent events.

As regards fishery rights, on the other hand, a great difference of views still prevails. With both Norway and Spain, diplomatic difficulties may any day result from both of these countries claiming jurisdiction over a larger margin of coast waters than the ordinary three-miles. English trawlers fishing within the Spanish six-miles limit expose themselves under Spanish law to penalties; this has already, it seems, given rise to trouble.

The question of revising the limits fixed for Territorial Waters in the Convention of 1882 (*see* above) was the subject of an animated discussion at the recent conference at Hull of the National Sea Fisheries Protection Association (Sept. 18, 19, and 20, 1906), when a resolution was adopted in favour of maintaining the present three-mile limit on grounds of expediency, which deserve serious consideration.[2]

It seems practically impossible to regulate fishery rights in accordance with any uniform limits. The necessities of preservation of the fish supply justify a claim to the exercise of jurisdiction by adjacent States over areas which differ so widely that even to fix any reasonable maximum distance from low-water mark would not meet all cases.

[1] See p. 59 *et seq.*

[2] Mr. C. Hellyer of Hull, who moved the resolution, produced tables of figures showing that a 13-mile limit would exclude British vessels from an area of over 135,000 nautical square miles of the fishing grounds of Western Europe, *i.e.* from an area nearly equivalent in size to the trawlable area of the North Sea, or nearly one-third of the total area available for trawling (*ex* White Sea or Baltic). A 9-mile limit would exclude them from over 80,000 nautical square miles. As the British steam trawling fleet is more than six times greater than that of all other countries combined, the subject cannot be disposed of as involving legal principles only.

The subject is, however, far from exhausted with the claims of the trawling industry, as the following passages from an interesting article by an apparently highly competent correspondent in the *Standard* of April 9, 1907, show:—"During the spring of the present year there has been a recrudescence of the old grievance on the part of British fishermen against alien trawlers. The agitation has assumed proportions never before approached. The starting point of this outcry was an incident which occurred off Start Point on the evening of March 2 last. The Plymouth fishing boat Shamrock was riding to her nets upon the mackerel grounds. A French steam trawler was seen approaching, and, although the English boat was showing her regulation lights, the steam vessel continued holding her course. . . . The Frenchman came sweeping past within musket shot, dragging his trawl right athwart the Plymouth boat's gear. Her number and port of registry were carefully concealed by a corner of sail thrown over the lettering. The wire rope by which steam trawlers drag their nets cut through the Shamrock's riding rope, the whole wall of her meshes was carried away by the foreign trawler, and her skipper returned to Plymouth a ruined man for the rest of the fishing season. I boarded the vessel myself the following morning, and can vouch for the absolute accuracy of the narrative. I have spoken of this incident as the starting point, but it would be, perhaps, more correct to term it the culminating point in a long series of similar acts of depredation. At the time of its occurrence there were known to be no fewer than one hundred and fifty alien steam trawlers upon the mackerel grounds between Dartmouth and Eddystone. It may be explained that *these boats were fishing well outside the three-mile limit*, and that, consequently, by all the laws of freedom of the sea, they had as much right there as our own fishers. . . . The great industry of sea fishing may be broadly classed under two heads, trawling and drifting. In the first of these the vessel drags her nets, fashioned like a great purse, over the ground, and picks up all the prime fish of the ocean. In the second case the vessel shoots her nets, which are buoyed along the upper ridge and weighted at the lower, so as to float perpendicularly and form a solid wall of meshes in the water. At one end of this network barrier rides the boat; to the other end, which may be a mile and a half away, is attached a dan or buoy. The drift nets catch fish which swim near the surface in schools, thus evading the bottom trawl, and include mackerel, herrings, pilchards, and sprats. *It is an unwritten international law that trawlers shall trawl by day, and that drifters shall drift by night, so that there shall be no conflict between the two methods.* For it stands to reason that if a powerful trawler came dragging her heavy gear right through a fleet of drift boats she would ruin a whole "village" in a single night. The alien trawlers have not respected this rule, hence the trouble. They are seeking the same species of fish as the drifters, which they catch in "flying trawls," or trawls poised to drag through the water at a little distance beneath the surface. . . . To increase the coastal patrol would be but a half measure. There is no use in establishing a complete and effectual guard without defining exactly the terms upon which it may exercise its authority. And before this can be done *certain moot points require to be resolved into specific acts of international law.* Chief amongst these is the question of the legitimacy of trawling by night upon the drift fishery grounds. Usage is not a sufficiently definite sanction. . . . Unless practical action is speedily taken, an important and most deserving industry, which, after all, is really national in its importance, will have been crushed out of existence by the unchecked exercise of a species of rivalry which disregards all the limitations of fair competition in the pursuit of its end.'

The Rules adopted by the Institute of International Law are as follows :—

Whereas there is no reason to confound in a single zone the distance necessary for the exercise of sovereignty and protection of coast fisheries and the distance necessary to guarantee the neutrality of non-belligerents in time of war; And whereas the distance most commonly adopted of three miles from low-water mark has been recognised as insufficient for the protection of coast fisheries; And whereas, moreover, this distance does not correspond to the real range of cannon placed on the coast: The following dispositions are adopted :—

Art. I.—The State has a right of sovereignty over a belt of sea along its coast, subject to the right of inoffensive passage reserved in Article V. This belt is called *territorial waters* (mer territoriale).

Art. II.—Territorial waters extend for six miles (60 to one degree of latitude) from low-water mark along the whole extent of its coasts.

Art. III.—For bays, territorial waters follow the trend of the coast, except that they are measured from a straight line drawn across the bay from the two points nearest the sea where the opening of the bay is of twelve marine miles in width, unless a greater width shall have become recognised by an immemorial usage.

Art. IV.—In case of war, the adjacent neutral State shall have the right to extend by its declaration of neutrality, or by special notification, its neutral zone from six miles to cannon range from the coast.

Art. V.—All ships, without distinction, have the right of inoffensive passage through territorial waters, subject to the belligerent right to regulate, and for purposes of defence to bar the passage through the said waters for every ship, and subject to the right of neutrals to regulate the passage through the said waters for ships of war of all nationalities.

Art. VI.—Crimes and offences committed on board foreign ships passing through territorial waters by persons on board such ships upon persons or things on board the same ship, are, as such, beyond the jurisdiction of the adjacent State, unless they involve a violation of the rights or interests of the adjacent State, or of its subjects or citizens not forming part of its crew or its passengers.

Art. VII.—Ships passing through territorial waters must conform to the special rules laid down by the adjacent State, in the interest of and for the security of navigation and for the police of the sea.

Art. VIII.—Ships of all nationalities, by the simple fact of being in territorial waters, unless merely passing through them, are subject to the jurisdiction of the adjacent State.

The adjacent State has the right to continue upon the high seas the pursuit of a ship commenced within territorial waters, and to arrest and try it for an offence committed within the limits of its waters. In case of capture on the high seas the fact shall, however, be notified without delay to the State to which the ship belongs. The pursuit is interrupted from the moment the ship enters the territorial waters of its own State or of a third Power. The right of pursuit ceases from the moment the ship enters a port either of its own country or of a third Power.

Art. IX.—The special position of ships of war and of ships assimilated to them is reserved.

Art. X.—The provisions of the preceding articles are applicable to straits not exceeding twelve miles in width, with the following modifications and exceptions :

(1) Straits, the coasts of which belong to different Powers, form part of the territorial waters of the adjacent States, their jurisdiction respectively extending to the middle line of the straits;

(2) Straits whose coasts belong to the same State, and which are indispensable for maritime communication between two or more States other than the State in question, form part of the territorial waters of the said State whatever the proximity of the two coasts may be;

(3) Straits serving as a passage between one open sea and another can never be closed.

Art. XI.—The position of straits already regulated by Conventions or by special usage is reserved.

## XVIII

# ASSIMILATION OF PRACTICE IN "PACIFIC" BLOCKADES

Pacific blockade, or as it should rather be called, "blockade in time of peace," an institution of recent origin, is not an operation of war. It is a coercive measure resorted to by maritime Powers which are able to bring into action such vastly larger forces than the resisting State can dispose of, that resistance is out of the question.

There has been controversy as to whether the blockading Power has a belligerent right of confiscation in case of violation of the blockade against vessels and cargoes not belonging to the blockaded country. France has leaned to an assimilation of pacific blockade to that recognised by International Law for the benefit of belligerents,[1] and Great Britain to the view that a pacific blockade must be confined in its effects to the State blockaded. The blockades of Greece and Crete in 1886 and 1897 are the most authoritative precedents, on account of the number of Powers in whose name they were carried out, and of their effectiveness in the achievement of their object. The British instructions in 1886 were to detain any ships under the Greek flag entering or issuing from any of the blockaded ports, but not ships under a neutral flag, nor even Greek ships, if any part of the cargo on board belonging to any subject or citizen of any foreign Power other than Greece, and other than the blockading Powers, had been shipped "before notification of the blockade or after such notification, but under a charter made before the notification."

[1] See correspondence between Lord Granville and M. Waddington, "Parl. Papers,' France, No. I., 1885.

The blockade of 1897 was notified in the different terms the different circumstances required; but in this case neutral ships

and cargoes were subjected, along with those of the blockading Powers, to specific restrictions.[1]

The rules adopted by the Institute of International Law in 1887 showed the leading jurists of Europe and the then recent practice to be in harmony. These rules are as follows:

"1. Vessels under a foreign flag may freely enter in spite of the blockade.

"2. A pacific blockade must be officially declared and notified, and must be maintained by a sufficient force.

"3. Vessels of the blockaded Power which do not respect such a blockade may be sequestrated. The blockade having ceased, they shall be restored with their cargoes to their owners, but without compensation of any kind being due."

If these rules had been the subject of an international agreement in 1897, paragraph 1 of them would have been violated.

The objection to the terms of paragraph 1 could be overcome by modifying it as follows: "Vessels under a foreign flag shall, as far as practicable, be allowed to freely enter and issue in spite of the blockade, subject always to indemnification for loss in case they should be arrested."

There would always be the alternative of making the blockade an act of war, as in the case of the action taken by Great Britain, Germany, and Italy in 1902–1903 against Venezuela, which was not a pacific blockade, but war with all its consequences for belligerents and neutrals, as stated in the Foreign Office notice published in the *London Gazette* of December 20, 1902.[2]

[1] The "British Notification of the Blockade of the Island of Crete" was as follows: FOREIGN OFFICE, March 19, 1897. "It is hereby notified that the Marquess of Salisbury, K.G., Her Majesty's principal Secretary of State for Foreign Affairs, has received a telegraphic despatch from Rear-Admiral Harris, commanding Her Majesty's naval forces in Cretan waters, addressed to the Lords Commissioners of the Admiralty, and dated the 18th of March, announcing that the Admirals in command of the British, Austro-Hungarian, French, German, Italian, and Russian naval forces have decided to put the Island of Crete in a state of blockade, commencing the 21st March, 8 a.m. The blockade will be general for all ships under the Greek flag. Ships of the Six Powers or neutral Powers may enter into the ports occupied by the Powers and land their Merchandise, but only if it is not for the Greek troops or the interior of the island. These ships may be visited by the ships of the international fleets. The limits of the blockade are comprised between 23° 24′ and 25° 30′ longitude east of Greenwich, and 35° 48′ and 34° 45′ north latitude."

[2] The text of the Foreign Office notice was as follows:

"It is hereby notified that as the United States of Venezuela have failed to comply with the demands of His Majesty's Government, a blockade by His Majesty's naval forces of the ports of La Guaira, Carenero, Guanta, Cumana, Carupano, and the mouths of the Orinoco, is declared, and such blockade will be effectively maintained from and after the 20th day of December, subject to an allowance of the following days of grace: For vessels sailing before the date of this notification from West Indian ports, and from ports on the east coast of the continent of America, ten days for steamers and twenty days for sailing vessels; from all other ports, twenty days for steamers and forty days for sailing vessels; for vessels lying in ports now declared to be blockaded, fifteen days. Vessels which attempt to violate the blockade will render themselves liable to all measures authorised by the laws of nations and the respective treaties between His Majesty and the different neutral Powers.—December 20, 1902."

## XIX

# EMPLOYMENT OF ARMS FOR ENFORCEMENT OF CONTRACTUAL OBLIGATIONS

WHERE the purpose of exacting reparation from a South American Republic for an outrage against a citizen of a foreign nation, said President Roosevelt in his Message of December 5, 1905, leads a foreign nation to employ force, there is nothing in the Monroe Doctrine to oblige the United States to interfere "save to see that the punishment does not assume the form of territorial occupation in any shape." "The case," he went on to say, "is more difficult when it refers to a contractual obligation. Our own Government has always refused to enforce such contractual obligations on behalf of its citizens by an appeal to arms. It is much to be wished that all foreign Governments would take the same view. But they do not; and, in consequence, we are liable at any time to be brought face to face with disagreeable alternatives. On the one hand, this country would certainly decline to go to war to prevent a foreign Government from collecting a just debt; on the other hand, it is very inadvisable to permit any foreign Power to take possession, even temporarily, of the Customs Houses of an American Republic in order to enforce the payment of its obligations, for such temporary occupation might turn into a permanent occupation. The only escape from these alternatives may at any time be that we must ourselves undertake to bring about some arrangement by which so much as possible of a just obligation shall be paid. *It is far better that this country should put through such an arrangement, rather than allow any foreign country to undertake it.* To do so ensures the defaulting Republic from having to pay debts of an improper character under duress, while it also ensures honest creditors of the Republic from being passed by in the interest of dishonest or grasping creditors. Moreover, for the United States to take such a position offers the only possible way of ensuring us against a clash with some foreign Power. The position is, therefore, in the interest of peace as well as in the interest of justice."

The extent to which the United States Government is prepared to go in actual international practice has, however, still to be seen.

The attitude of the South and Central American Republics towards the subject is summed up in what is called the Drago or Calvo theory. M. Calvo, the late distinguished Argentine jurist and diplomatist, in connection with the war declared by Great Britain, Germany, and Italy against Venezuela in 1902–1903, addressed a circular letter to his colleagues of the Institute of International Law and of the Institute of France, calling their attention to a protest which the Argentine Government had addressed to that of the United States against the principles involved in the action taken by the above three States. The "theory," better known under the name of the then Minister of Foreign Affairs of the Argentine Republic, Dr. Luis F. Drago, is that it should be a principle, enforced for the common safety of the South American Republics, just as the Monroe Doctrine is a principle, enforced by the United States, for the preservation of the territorial *status quô* throughout the American continent against European aggression, that the collection of pecuniary claims of citizens of any country against the Government of any South American Republic shall not be effected by violence.

Dr. Drago set out the grounds on which the principle is based in a despatch to the Argentine Minister at Washington, dated December 29, 1902. Referring to the injuries which subjects of the claimant nations had suffered during the revolutions and wars which had recently taken place in Venezuela, and to the fact that certain payments, on account of the external debt of that State, had not been met at the stipulated time, his memoir went on—

"It is to be noticed in the first instance . . . that the capitalist who supplies any money to a foreign State always takes into consideration the resources of the country, and the more or less probability that the obligations contracted will be fulfilled without difficulty. Because of this, every Government obtains different credit, in view of its grade of civilisation and culture and its conduct of affairs, and these circumstances are measured and weighed before the contracting of any loan, and serve to make its conditions more or less onerous, according to the exact data which on such subjects are kept on file by all bankers. Besides, the creditor knows that he contracts with a sovereign entity, and it is the inherent condition of all sovereignty that proceedings against it, to collect its alleged debts, cannot be entered into or carried out without its consent, as that form of demand of payment would

compromise its very existence, making its independence to disappear. Among the fundamental principles of international law that mankind has sanctioned, one of the most precious is the one which determines that all States, whatever be the force they may dispose of, are entities *de jure*, perfectly equal among themselves, and reciprocally deserving, for that reason, the same amount of consideration and respect. An acknowledgment of the debt and the liquidation of its amount may be made and should be made by the nation, without injury to its primary rights as a sovereign entity, but the compulsory and immediate demand of payment at a given moment, by means of force, would not produce other than the ruin of the weaker nations and the absorption of their Governments, together with all their inherent faculties, by the powerful nations of the earth. The illustrious Hamilton has said that the contracts between a nation and private individuals are binding according to the conscience of the sovereign, and cannot be the object of compulsive force; they do not confer any right whatever for action outside of the sovereign will. An acknowledgment of a public debt, and fixing the obligation of paying it, is not a declaration destitute of value, because recovery is not to be effected by means of violence. A State maintains and upholds its duty and capacity to pay its debts, and sooner or later the obscure conditions resolve themselves, the resources augment, the operations of equity and justice prevail, and the most protracted obligations are met and satisfied. Therefore, the judgment that sets forth an obligation to pay the debt, be it passed by the Courts of the nation or by an arbitral tribunal that expresses a permanent desire of justice as the fundamental basis for the political relations of nations, constitutes an indisputable title which cannot be compared for value with the uncertain right of one whose claims are not acknowledged, and who finds himself forced to recur to compulsive action as a means of obtaining settlement. As these sentiments of justice, of loyalty, and honour are the ones that animate the Argentine people and have inspired at all times its policy . . . it has felt alarmed on learning that the failure to meet the service of the public debt of Venezuela has been assigned as one of the causes which have led to the seizure of her fleet and the bombardment of one of her ports, and a war blockade rigorously established along her coasts. If these proceedings were to be definitely adopted as a precedent, they would undermine alike the security and the peace of all the countries in this part of America. The recovery of debts by military methods supposes a territorial occupation to render it effective, and a territorial occupation signifies the suppression, over the sphere of such occupation, of the Government of the country wherein it is extended. Such a condition contradicts visibly the principles ofttimes proclaimed by the nations of America and especially the Monroe Doctrine, upheld and defended at all times with so much zeal by the United States,—a doctrine to which the Argentine Republic before now has solemnly adhered. Among the principles enunciated by the memorable Message of President Monroe of December 22, 1823, there are two great declarations which especially refer to these Republics, viz.: 'The American continents by the independent condition which they have assumed and maintained are henceforth not to be considered as subjects for future colonisation by any European Power; and acknowledged as has been the independence of the Governments of America, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny by any European Power in any other light than as a manifestation of an unfriendly disposition toward the United States.' In these later days, however, there has been a marked tendency amongst European nations to signal out these countries as an ample field for future territorial expansions. Great thinkers have insinuated the convenience of directing toward this end the great efforts which the principal European Powers have applied to the conquest of barren regions with inclement climates on the most remote borders of the world. Many are the European writers who point out the territories of Central and South America, with their great wealth, their bright skies and propitious climate, adapted to every production, as a proper field wherein the European Powers, which have already at hand the arms and implements of conquest, shall dispute the predominance in the course of the present century. The expansive human tendency, heated thus by the suggestions of public opinion and the press, may at any moment take an aggressive turn, even against the wish of the present governing classes, and it will not be denied that the most simple way of obtaining control and of suppressing

local authorities by the Governments of Europe is to be found by means of financial intervention, as can be shown by numerous examples. The only thing that the Argentine Republic maintains, and which she would see with great satisfaction consecrated, in view of the events that have occurred in Venezuela, by a nation such as the United States, which possesses so great authority and power, is the principle that there cannot be European territorial expansion in America, or oppression of the peoples of this continent, because their unfortunate financial condition might oblige one or more of them to put off the fulfilment of its obligations; that is to say, the principle, which I should like to see acknowledged, is that a public debt cannot give rise to the right of intervention, and much less to the occupation of the soil of any American nation by any European Power. The loss of prestige of the States that fail to meet the claims of their legitimate creditors bring about difficulties of such a character that there is no necessity for foreign intervention to aggravate the temporary calamities consequent on insolvency. The Argentine Republic might cite her own experience to prove how unnecessary armed interventions are in such cases. The service of the English debt of 1824 was spontaneously resumed by Argentina after an interruption of thirty years, brought about through a state of anarchy and the political complications which during that period disturbed the country, and all arrears were scrupulously paid, together with all interest, without the creditors taking any action whatever to obtain this result. At a later period a series of events and financial embarrassments, altogether beyond the control of her administrators, placed her for a time in the condition of having to again suspend temporarily the service of the debt. Nevertheless, she had a firm, decided resolve to resume payment as soon as circumstances should permit it, and which she did in fact shortly afterwards, at the cost of enormous sacrifices, but of her own free, spontaneous will, and without the intervention of any foreign Power; and it is to her most scrupulous, honest, and correct proceedings and her high sense of dignity and justice, that the difficulties through which she has passed, instead of impairing her credit, have helped to increase it in European markets. It may be stated with perfect certainty that such satisfactory results would not have been obtained, if the creditors had deemed it expedient to intervene in a violent manner at the period of the crisis in her finances. . . . Long is the road over which South American nations may yet have to travel, but they have sufficient faith and the acquired energy to obtain their thorough development, helping each other as they go along. . . ."

The theory thus enunciated by Dr. Drago is not new, having already been enunciated, as he mentions, over a century ago by Alexander Hamilton and reiterated since then by several American statesmen, such as Albert Gallatin, William L. Marcy, and Frelinghuysen, as the view prevailing at Washington during their respective periods of office.

The attitude of the present United States Government in theory seems to be a somewhat more drastic one, judging by the President's recent statement. Statements in presidential messages, however, are often merely tentative.

The only opportunity of judging as to the practical attitude of the United States has been in connection with a subsidiary point in the award of the tribunal of arbitration in the Venezuela Case, of February 22, 1904, which prescribed that "The Government of the United States of America is charged with seeing to the execution of this latter clause within a term of three months." The latter clause was one under which the parties were to bear their own costs and "an equal share of the costs of the Tribunal." The United States Government did not see its way to accepting the charge, as the Secretary of State (Mr. John Hay) explained, in a letter dated March 9, 1904, to the American Minister at The Hague (Mr. Stanford Newell). "Inasmuch," he said, "as the protocols did not confer upon the tribunal any power to commission any Government to see to the execution of the award or any part of it by other Governments, the United States Government would feel great delicacy in undertaking to execute the mandate. The want of authority on its part to do so would make it extremely embarrassing. In case any one of the other States should refuse to pay its own costs or its share of the costs of the tribunal, the United States Government would have no means to execute the mandate. The action of the United States in respect to the payment of the costs must, therefore, be limited to the payment of its own costs and its share of the costs of the tribunal."

The United States Government, it is alleged, intends to bring up the subject at the second Hague Conference. It is also alleged that the majority of the South American States are in favour of this.[1] Inasmuch as the Drago theory is ostensibly nothing but a ryder to the Monroe Doctrine, it is interesting to recall the declaration made on behalf of the United States Government at The Hague Conference of 1899, viz., that "it is . . . well understood that nothing in the Convention shall be construed as implying the abandonment by the United States of America of their traditional attitude in regard to purely American questions." President Roosevelt's attitude in the Venezuelan question in 1903, and his Message of December 5, 1905, must be considered in conjunction with this declaration as showing that it is not probable that anything will be agreed to by the United States in connection with the Drago theory which will in any way weaken the application of the Monroe Doctrine. An alleged opposition on the part of

[1] See newspaper reports of the resolutions of the Pan-American Congress.

Argentina to submitting the Drago theory for discussion would probably be based on the same grounds which would make the United States decline discussion on the Monroe Doctrine.

If the United States wish to bring up the subject at the new Hague Conference, it can only be in order to make their attitude on the subject perfectly clear, and, if possible, to extract from European Powers some kind of recognition of the Drago theory which would lighten the task of the Executive at Washington, in case difficulties like that of 1902 should again arise between European and South American Governments.

The subject is one of extreme delicacy. In so far as purely contractual obligations are concerned, States, without any sacrifice of national dignity, can no doubt leave their nationals to look out for themselves, on the assumption, as Dr. Drago says, that they must have calculated the risk before they made their venture. There are, however, seldom such simple cases as these.[1]

Where injury to the persons or property of foreign residents is involved, it is impossible for any self-respecting Government to play the part of an indifferent spectator. A Government can, no doubt, guarantee itself against liability for such injury by giving timely notice. If it does not do so, it is exposed to claims for indemnity for the resulting damage. The ordinary method of settling such claims is to refer them to mixed commissions or to arbitration. If the State assessed or condemned to pay refuses to pay or delays payment unduly, the only pressure which remains to be exercised is force of some kind. Naval demonstrations, embargoes, pacific blockades, are methods of resorting to force without war; but such coercive methods insensibly drift into war in case of resistance. And war, as President Roosevelt pointed out in his Message of December 5, 1905, may entail occupation by the invading forces, and these may find themselves constrained to remain there, and may have to be increased till resistance is overcome. To obviate the danger of such occupations and the possible presence of large bodies of European troops on American soil, is the problem

[1] As regards the principles which, in general, guide the British Government in connection with claims against defaulting governments, Lord Derby (then Foreign Secretary), on November 5, 1876, in reply to representations of a deputation from the creditors of the Ottoman Empire, said:—

"In all these cases our invariable rule has been to give moral and unofficial support when we thought it would be useful, but to avoid committing ourselves to any official demands. I think the principle is a sound one. No doubt we have guaranteed Turkey, but that does not constitute an exceptional circumstance, for we have done the same thing for Greece. The question which really does create difficulty is the language which has been held by some of our public men. I have looked carefully to what has been said by Lords Palmerston, Clarendon, and Russell, and though I do not hesitate to say, with all deference to those eminent men, that I think in some cases they went further in giving a moral support to the Government of Turkey as borrowers than was altogether expedient, yet I do not think they ever held language which could reasonably justify the expectation that the Government would interfere forcibly to compel payment of any debt in the case of default."

which arises for the United States in connection with the Drago theory.

The following interesting passage in the case submitted to The Hague Court by the United States counsel (Wayne MacVeagh, Herbert W. Bowen, and W. L. Penfield) on behalf of Venezuela, gives an intimation of the way in which such difficulties ought, according to some competent American authorities, to be dealt with:—

"It is doubtless to be always remembered that a powerful European nation thus confronting with its demands a weak and distracted South American Republic is very apt to think that the latter will be deaf to all remonstrances, however just, and refuse to properly meet all claims however well founded, because of the belief that the United States stands as a protecting nation between it and the aggression of any European Power. But if such misconceptions exist, either in Europe or in South America, there is no ground whatever for their continuance. All that the United States has ever asked, or ever properly can ask, is that no European nation shall seek to establish its system of government upon any portion of the American hemisphere; although it may at any time be compelled to take the further step of demanding that the Latin-American Republics should be treated in the same manner and with the same degree of consideration which ought to be extended to all other independent Governments in the family of nations. What line of conduct such a demand would indicate is perfectly clear, and does not impose the slightest hardship upon any European Power. It would simply require that in the first instance they should endeavour, without irritation or such domineering spirit as this record discloses, to reach an amicable arrangement by diplomatic methods as to the matters in controversy. If that effort fail, then as the law of nations has been enlarged by the Peace Conference, a persistent effort should be made to secure either mediation or arbitration, or both; and if any Government of Latin-America was so foolish as finally to decline all such overtures, the complaining nation could be at perfect liberty to appoint a judicial tribunal of her own [1] to pass upon the question of the merits of the claims presented and of the financial ability to provide for their payment. Thereafter she would be at liberty to enforce them, and no doubt with the cordial approval of the Government of the United States, by such methods as were likely to produce the best practical results with the least use of armed force; and *provided always that no permanent occupancy of any territory was contemplated.* This would seem to be the method which common sense and a decent regard for the rights of others, now that the Peace Conference has authoritatively spoken on the general subject of international relations, would dictate; but there is one additional grave consideration which, it is submitted with confidence, ought always to be kept in view, and that is, that any effort to collect by armed force the indebtedness of independent nations to holders of their bonds or holders of concessions, will always be fraught with danger.

[1] This would be following the example of the United States Government in the *Venezuela Boundary* difficulty.

The *modus operandi* thus sketched out would leave it to circumstances to guide the United States in determining when *permanent occupancy* seemed to become a possibility. The President's Message of December 5, 1905, seems, however, to

foreshadow some *arrangement* under which occupation by any European Power would become unnecessary.

The subject bristles with difficulties, and it is probably safer to leave each case to be dealt with in accordance with its particular requirements, than to try to organise any definite system in which the United States would have to be the medium of obtaining redress for the grievances of complaining European States, except as hitherto, *i.e.*, acting as the common friend of the contending parties, and with due reiteration as usual of the Monroe Doctrine.

# XX

# CONTRACTUAL LIMITATION OF ARMAMENTS

"The maintenance of universal peace and a possible reduction of the excessive armaments which weigh upon all nations, represent, in the present condition of affairs all over the world, the ideal towards which the efforts of all Governments should be directed," were the opening words of the Note which the Russian Minister of Foreign Affairs, Count Mouravieff, at his weekly reception on August 12, 1898, handed to the diplomatic representatives of the different Powers. The Note went on to say—

"Being convinced that this high aim agrees with the most essential interests and legitimate aspirations of all the Powers, the Imperial Government considers the present moment a very favourable one for seeking, through international discussion, the most effective means of assuring to all peoples the blessings of real and lasting peace, and above all, of limiting the progessive development of existing armaments. . . . The ever increasing financial burdens strike at the root of public prosperity. The physical and intellectual forces of the people, labour and capital, are diverted for the greater part from their natural application and wasted unproductively. Hundreds of millions are spent in acquiring terrible engines of destruction, which are regarded to-day as the latest inventions of science, but are destined to-morrow to be rendered obsolete by some new discovery. National culture, economic progress, and the production of wealth are either paralysed or developed in a wrong direction. Therefore the more the armaments of each Power increase, the less they answer to the objects aimed at by the Governments. Economic disturbances are caused in great measure by this system of excessive armaments; and the constant danger involved in this accumulation of war material renders the armed peace of to-day a crushing burden more and more difficult for nations to bear. It consequently seems evident that if this situation be prolonged it will inevitably result in the very disaster it is sought to avoid, and the thought of the horrors of which makes every humane mind shudder. It is the supreme duty, therefore, of all States to place some limit on these increasing armaments, and find some means of averting the calamities which threaten the whole world."

The answers to the suggestion of holding an International Conference of the Powers to deal with the question of "excessive armaments" were unanimously favourable.

A further Note, dated January 11, 1899, submitting the programme proposed, gave more precision to this item, which

thereupon took the following form: "An understanding not to increase for a fixed period the present effectives of the armed military and naval forces, and at the same time not to increase the budgets pertaining thereto; and a preliminary examination of the means by which even a reduction might be effected in future in the forces and budgets above mentioned."

At the Conference the Russian Government, further developing the proposal, submitted the following details:—

"1. Establishment of an international understanding for a term of five years, stipulating non-increase of the present figures of the peace effective of the troops kept up for home use.

"2. Fixation, in case of this understanding being arrived at, and, if possible, of the figures of the peace effective of all the Powers, excepting colonial troops.

"3. Maintenance for a like term of five years of the amount of the military budgets at present in force."

When the subject came on for discussion in the Commission appointed to deal with it, the German military delegate stated his view that "the question of effectives could not be discussed by itself, as there were many others to which it was in some measure subordinated, such, for instance, as the length of service, the number of cadres, whether existing in peace or made ready for war, the amount of training received by reserves, the situation of the country itself, its railway system, and the number and position of its fortresses. In a modern army all these questions went together, and national defence [1] included them all." In Germany, moreover, the military system "did not provide for fixed numbers annually, but increased the numbers each year." [2] After many expressions of regret at finding no method of giving effect to the proposal, the Commission recorded its opinion that "a further examination of the question by the Powers would prove a great benefit to humanity."

The Conference, however, were unanimous in the adoption of the following resolution:—

"The Conference is of opinion that the restriction of military budgets, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind";

and passed also the following *vœu*:—

"That Governments, taking into account the proposals made at the Conference, should examine the possibility of an understanding concerning the limitation of military and naval armaments, and of war budgets." [3]

[1] "The word *defence* in war," says Captain Mahan, "involves two ideas, which, for the sake of precision in thought, should be kept separated in the mind. There is defence pure and simple, which strengthens itself and awaits attack. This may be called passive defence. On the other hand, there is a view of defence which asserts that safety for one's self, the real object of defensive preparation, is best secured by attacking the enemy. In the matter of sea-coast defence, the former method is exemplified by stationary fortifications, submarine mines, and generally all immobile works destined simply to stop the enemy if he tries to enter. The second method comprises all those means and weapons which do not wait for attack, but go to meet the enemy's fleet, whether it be but for a few miles, or whether to his own shores. Such a defence may seem to be really offensive war, but it is not; it becomes offensive only when its object of attack is changed from the enemy's fleet to the enemy's country."—*Influence of Sea Power*, 5th Ed. p. 87 (note), (1889).

[2] "I can hardly believe," said General von Schwarzhoff, "that among my honoured colleagues there is a single one ready to state that his sovereign, his government, is engaged in working for the inevitable ruin, the slow but sure annihilation of his country. . . . The German people is not crushed under the weight of charges and taxes, it is not hanging on the brink of an abyss, it is not approaching exhaustion and ruin. Quite the contrary, public and private wealth is increasing, the general welfare and standard of life is being raised from one year to another. So far as compulsory military service is concerned, which is so closely connected with these questions, the German does not regard this as a heavy burden, but as a sacred and patriotic duty, to which he owes his country's existence, its prosperity, and its future."

M. Bourgeois, on behalf of the French delegates, replied:—"I listened with great attention at the last session to the remarkable speech of General von Schwarzhoff. He presented with the greatest possible force the technical objections which, according to his view, prevented the committee from adopting the propositions (Russian) of Colonel Gilinsky. It did not, however, seem to me that he, at the same time, recognised the general ideas in pursuance of which we are here united. He showed us that Germany is easily supporting the expense of her military organisation, and he reminded us that notwithstanding this, his country was enjoying a very great measure of commercial prosperity. I belong to a country which also supports readily all personal and financial obligations imposed by national defence upon its citizens, and we have not been hindered in the increase of our financial prosperity. But General von Schwarzhoff will surely recognise with me that if in his country, as well as in mine, the great resources which are now devoted to military organisation were, at least in part, put to the service of peaceful and productive activity, the grand total of the prosperity of each country would not cease to increase at an even more rapid rate. . . ."

[3] Lord Goschen, when First Lord of the Admiralty, issued a public invitation on behalf of the Government to other countries to respond to British feeling in favour of a reduction of naval armaments.—Sir E. Grey, House of Commons, May 9, 1906.

Lord Goschen's statement on the subject in the House of Lords was as follows: "An International Conference is to be assembled. Will the deliberations of that Conference—will the actions of other nations resulting from that Conference—make it possible for us to diminish or modify our programme for new construction, while, of course, maintaining our standard and not altering our relative position? We have been compelled to increase our expenditure as other nations have increased theirs, not taking the lead, not pressing on more than they. As they have increased, so we have increased. I have now to state on behalf of Her Majesty's Government that similarly, if the other great Naval Powers should be prepared to diminish their programme of shipbuilding, we should be prepared on our side to meet such a procedure by modifying ours. The difficulties of adjustment are no doubt immense, but our desire that the Conference should succeed in lightening the tremendous burdens which now weigh down all European nations is sincere. But if Europe comes to no agreement, and if the hopes entertained by the Tzar should not be realised, the Programme which I have submitted to the House must stand."—March 9, 1899.

The growth of armaments, since the Conference, has continued at a still greater speed than ever, and, if their limitation was desirable in 1899, it is far more so now. It has also become a more complicated question through the recent rise of a great military Power in the Far East, which has brought British colonies within the scope of the considerations excessive armaments suggest.

Speaking in the House of Commons on March 17, 1903, Mr. Arnold-Forster, the Secretary for War, observed, as regards colonial feeling, that

"there was an impression that naval warfare could be conducted on the principle of limited liability, and that a colony, in the event of war, would only need a force capable of meeting the belligerent squadron that might happen to be in its neighbourhood at the outbreak of hostilities. But if Australia, for example, were menaced by France, or Japan, or Germany, the Australians would at once find out that this idea of limited liability in naval warfare was a fallacy, and that they would have to contend, not merely against the German, or French, or Japanese squadron in Australian waters, but against the whole maritime power of the hostile nation. . . . If Australia were to establish a navy on the most economical lines, its cost would not be less than £1,000,000 a year."

Latterly the general public, more particularly in Great Britain and France, has shown an interest in the rapid growth of armaments as a possible cause of grave economic troubles. A high state of military preparedness of any one State obliges all the others to endeavour to be prepared on the same level. This process of emulation, very appropriately called by Sir H. Campbell-Bannerman "a policy of huge armaments,"[1] unfortunately is a policy from which it is impossible for any country to extricate itself without the co-operation, direct or indirect, of other nations.[2]

In the course of a debate on the reduction of armaments in the House of Lords on May 25, 1906, a number of interesting remarks were made on a suggestion of Lord Avebury, that "if our overtures were rejected, we should have held out the olive branch, and it would be an honourable, even glorious failure. But he did not entertain such a fear; he had too much confidence in the common sense and conscience of Europe";

Lord Sanderson observed that: "Armaments were not so much

[1] See Prime Minister's Speech at the Albert Hall, December 21, 1905.

The British Government has given an earnest of its good intentions in regard to keeping down expenditure on armaments by a substantial reduction in the current estimates; but on the Continent it has been observed that this is not really a matter of reduction, but merely one of economy; and a writer in the May *Fortnightly* (1907), who signs "Excubitor," undertakes the defence of the diminution as not in any way diminishing the efficiency of the British Navy. The following suggestive remarks of this writer are worth meditation:—"When the late Government went out of office, and before it was known that the *Dreadnought* would automatically retard naval construction throughout the world, a memorandum was issued stating that it would be necessary to lay down 'four large armoured ships' annually. Last July, when the delay in foreign construction had already become apparent to some extent, it was notified on behalf of the Admiralty that only three of these ships would be laid down, and now for the coming financial year it is intended to begin two only, and to hold a third in suspense until the success or failure of The Hague Conference in arresting the progress of naval armament is known. Nor is this the full measure of the offer which the British Government will be able to make to the Peace delegates. It has been arranged that neither of the two battleships definitely included in the programme shall be commenced until about December next. . . . There is no suggestion of abandoning our barometer of naval strength—the two-Power standard. . . . Except on account of the expense involved, it matters not an iota to the most patriotic Englishman whether the two-Power standard and a margin over is based on 55 British battleships to 50 German and French battleships, or whether the proportion is 28 to 25. . . . The proposal has no bearing on peace, but it is a manœuvre in international economy. . . ."

Compare an article by Mr. J. A. Murray Macdonald, M.P., in the May number of the *Contemporary*, who "observes that it is inconceivable that any responsible statesman . . . would maintain that we ought to adhere to the two-Power standard on so unreal a plea as that we might possibly, within some measureable distance of time, be engaged in a war either with France and Germany in alliance, or with Germany and the United States in alliance."

"Nobody acquainted with the facts of the case," says Mr. Edward Dicey in the *Empire Review* (April 1907), "can dispute the statement that the main object of the agitation in favour of a general reduction of armaments is in reality a desire for the reduction of the military strength of the German Empire, and to a less extent for the reduction of the naval strength of the British Empire." Is Germany's military strength really a matter of much concern in Great Britain?

[2] On May 10, 1906, the following resolution on the subject of armaments was moved by Mr. Vivian and "agreed to" by the House of Commons:—"That this House is of opinion that the growth of expenditure on armaments is excessive, and ought to be reduced; such expenditure lessens national and commercial credit, intensifies the unemployed problem, reduces the resources available for social reform, and presses with exceptional severity on the industrial classes; and it, therefore, calls upon the Government to take drastic steps to reduce the drain on national income, and to this end to press for the inclusion of the question of the reduction of armaments by international agreement in the agenda of the forthcoming Hague Conference." The Foreign Secretary (Sir Edward Grey), speaking upon it observed:—"When The Hague Conference meets, what will be its object? To promote peace, to diminish the horrors of war. No greater service could it do than to make the conditions of peace less expensive than they are at the present time. To all the horrors of war which are commonly known, there are, no doubt, certain off-sets on the other side. You may set triumph against physical suffering, the fine qualities of courage and self-sacrifice against wounds and loss of life in war; but against the expenditure which war entails you have no off-set of that kind. That remains after all the excitement and passion of war is over, as a heavy deadweight pressing on the national life, lowering the standard of vitality in the country. Nowadays the expenditure in Europe on armies and navies is so great that in a sense every year we suffer that depression of national life which, though we are at peace, is in itself one of the worst conditions of war. Now, there is no more profitable task to which any such thing as The Hague Conference might aspire than to produce some practical result of agreement amongst nations as would lead to reduction of this unproductive expenditure. It is true there are difficulties about coming to any settlement. It was the original object of the first Hague Conference to do something to reduce expenditure, or, at any rate, to stop the increase of expenditure. The reason for doing that is not less urgent now than it was then. On the contrary, it is more urgent. It is said we are waiting upon foreign nations in order to reduce our expenditure. As a matter of fact we are all waiting upon each other. Some day or other somebody must take the first step."—*Times* report, May 11, 1906.

the outcome of any conscious aggressive intentions as of a general feeling of insecurity, owing to the impression that Europe was in a state of unstable equilibrium, and of a determination to be prepared for all risks. What was required was a general national movement in that direction on the part of some, at least, of the great military Powers, with some practical evidence of its earnestness and permanence";

Lord Fitzmaurice, that: "There had always been not only the difficulty of finding a unit of disarmament, but also the great difficulty of finding the tribunal—of fixing upon an arbitrator, as it were, who should decide as to whether or not the unit of disarmament, if one had been found, was really honestly and efficiently applied by all the contracting Powers";

Lord Lansdowne, that: "It was likely that in the past there had been much unwise naval and military expenditure, mainly due to the habit of depending rather too hastily upon the undigested advice of naval and military experts, and failure to consider the problem of defence in a comprehensive manner. A time might come when the people of this country would prefer to eat their daily bread in fear rather than starve in security. No greater blessing could be conferred upon the peoples of the world, and no greater claim to an immortal gratitude could be established by Sovereign or statesman, than by the Sovereign or statesman who was able to induce the European Powers to make some abatement in those costly armaments which are involving all of them in such immense expense. He attached the greatest value to treaties of arbitration. They secured a predisposition in favour of a peaceful settlement; they prevented the Powers that were parties to them from fastening a quarrel upon one another for some trivial reason; and when trouble was brewing they gave time, which so often had the effect of cooling down hot and angry passions. But treaties of arbitration would not rid the world altogether of the danger of war. He should most strongly object to anything in the shape of a contract by which the Government of this country bound itself to restrict either its naval or its military armaments within certain prescribed limits. Indeed the difficulty of finding a formula applicable to the varying conditions, political, naval, and military, of the contracting parties, was an almost insuperable difficulty in the way of such an arrangement. Moreover, supposing they made their bargain, what means had they of deciding whether the contract had been observed; and supposing they were satisfied that it had not been observed, what means had they of enforcing their bargain? It was notorious that there were many ways of evading any international bargains of the kind. But even if other Powers were ready to submit to such ties, he felt doubtful whether the people of this country would submit to them. For instance, no feature of the

recent Convention entered into by this country in regard to the prosaic subject of sugar was so unpopular as the Standing Commission which was set up to decide whether or not the contracting parties had violated the terms of the Convention. It was described as the handing over to a foreign tribunal of the arrangement of the tariffs of this country. If a small arrangement of that kind was unpopular, what would be said of an International Commission to whom we committed the task of saying to us, "You have too many battalions or too many ships, and we therefore call upon you at once to diminish your army by such and such a number of men, or your squadrons by such and such a number of vessels?" This country must, in his opinion, retain its freedom to take whatever measures were necessary for the security of the Empire and of British commerce.—*Times* report, May 26, 1906.

The subject has been brought forward in both the French and Italian Parliaments.

The declaration of the French Government, read by the Prime Minister, M. Sarrien, stated that—

"France hoped that other nations would grow, as she had done, more and more attached to solutions of international difficulties based upon the respect of justice, that she trusted that the progress of universal opinion in this direction would enable nations to regard the lessening of the present military budgets, declared by the States represented at The Hague, to be 'greatly desirable for the benefit of the material and moral state of humanity,' as a practical possibility."—Chamber of Deputies, June 12, 1906.

In the Italian Chamber of Deputies, an *interpellation* was addressed to the Minister of Foreign Affairs about the same time asking "whether the Government had knowledge of the motion approved by the British House of Commons, and of the undertaking of the British Government that, in the programme of the coming Hague Conference, the question of the reduction of armaments should be inserted, and in what spirit the Italian Government had taken or proposed to take the propositions of the British Government, and what instructions it would give to the Italian representatives at the Conference."

The Minister of Foreign Affairs, M. Tittoni, replied as follows:—

"I, as Minister of Foreign Affairs of Italy, now publicly express the adhesion of the Government to the humanitarian ideas which have met with such enthusiasm in the historic House of Parliament at Westminster. I have always believed that, as far as we are concerned, it would be a national crime to weaken our own armaments while we are surrounded by strongly armed European nations who look upon the improvement of armaments as a guarantee of peace. Nevertheless, I should consider it a crime against humanity not to sincerely co-operate in an initiative, having for object a simultaneous reduction of armaments of the great Powers. Italian practice

has always aimed at the maintenance of peace; therefore, I am happy to be able to say that our delegates at the coming Hague Conference will be instructed to further the English initiative."

M. Tittoni concluded by saying that, even if it were impossible to diminish armaments at once, Governments could always agree among them to better guarantee the maintenance of peace by other means. Recalling Count Goluchowski's words, "that there are irresponsible people who continually tend to disturb good relations between nations," he added that "there are such irresponsible people in every country, and it is chiefly against them that public opinion should react."—June 14, 1906.

On the other hand, a "policy of reduction of need of armaments" may be and is in fact at present being carried out by the indirect method of stimulating more friendly feelings among nations.[1] As among Great Britain and France and Italy, emulation in the increase of armaments has, in consequence of these more friendly feelings, for the present come to an end, and Great Britain has been able to reduce her Mediterranean Fleet as an immediate consequence of them.

[1] In this connection it is interesting to see Lord Alverstone, one of the warmest champions and most practical advocates of treaties of arbitration, four years before The Hague Conference, suggesting the creation of a permanent Court of Arbitration as a means by which armaments might be reduced. "No doubt," he said, "our ultimate aim involves the disbandment of armies, the disarmament of fleets, an object to be desired by all and not the less to be striven for because of the difficulties which surround its attainment. To attain this end it is absolutely necessary that there should be established, supported by civilised nations and commanding their respect, a college or academy of men recruited from time to time from various parts of the world, by whose impartial arbitrament nations would agree to be bound."—Inaugural Address at Brussels Meeting of the International Law Association, 1895, p. 38.

Again, the ten years' understanding entered into between Great Britain and Japan has, on the one hand, enabled Great Britain to diminish her naval squadron in the Far East, and, on the other, enabled Japan to leave out of her necessary political considerations the question of balancing her naval strength against that of Great Britain.

With the broadening of this policy of promoting international friendships and the removing of causes of international distrust, the strengthening of armaments proportionately loses its chief stimulus.

The only existing case of contractual reduction of armaments is that of the Disarmament Agreement of May 28, 1902, between the Chilian and Argentine Republics, which is as follows:—

At the Chilian Foreign Office, Mr. Vergara Donoso, Minister for Foreign Affairs of Chili, and Mr. José Antonio Terry, Envoy Extraordinary of the Argentine Republic, have agreed to put upon record in the present Agreement the different decisions arrived at with a view to reducing the maritime

armaments of the two Republics; such decisions having been adopted owing to the initiative and good offices of His Britannic Majesty:

Art. I.—In order to remove all cause of fear and distrust between the two countries, the Governments of Chili and of the Argentine Republic agree not to take possession of the warships which they are having built, and also for the present to make any other acquisitions. The two Governments urthermore agree to reduce their respective fleets, according to an arrangement establishing a reasonable proportion between the two fleets. This reduction to be made within one year from the date at which the present agreement shall be ratified.

Art. II.—The two Governments respectively promise not to increase their maritime armaments during five years, unless the one who shall wish to increase them shall give the other eighteen months' notice in advance. This agreement does not include any armaments for the purpose of protecting the shore and ports, and each party will be at liberty to acquire any vessels (*maquina flotante*) intended for the protection thereof, such as submarines, etc.

Art. III.—The reductions (*i.e.* ships disposed of) resulting from this agreement will not be parted with to countries having any dispute with either of the two contracting parties.

Art. IV.—In order to facilitate the transfer of the pending orders, the two Governments agree to increase by two months the time stipulated for the beginning of the construction of the respective ships. They will give instructions accordingly.

An agreement of this kind is more feasible as among States whose navies are small and of comparatively recent origin, than as among States whose navies are composed of vessels of many and widely different ages. It is difficult to see, in the latter case, on what principle the proportionate fighting value of the respective fleets could be assessed. The breaking-up or sale of obsolete warships is a diminution of the paper effective of a navy, and their purchase by another State a paper increase of theirs. Even comparatively slight differences in the ages of ships may make great differences in their fighting value. It would obviously be a hard task to establish "a reasonable proportion," such as provided for in Art. II. of the Chili-Argentine Agreement, as between large and old-standing navies like those of Europe.

On the other hand, as regards military power, it seems, sometimes, forgotten in the discussion of the question of armaments, that the conditions of the present age differ entirely from those of the time of the Napoleonic wars. With conscription a national army corresponds numerically to the numerical proportion of males in the national population. Great Britain, without conscription, has no means of raising troops in any such proportion. Thus, so long as she

refrains from adopting conscription, she can practically only carry on defensive warfare, and the object of her navy is therefore necessarily defensive, unless it act in co-operation with a foreign conscript army. As there are only three such armies available for the purpose of a war of aggression, the negotiation of contingent arrangements does not seem too remote for achievement by a skilful and well-meaning diplomacy.

In all humility, and speaking on such a matter as a mere "outsider," the writer suggests that among possibilities agreement as to a maximum tonnage for vessels of war seems as feasibile as one respecting a maximum calibre of their guns.[1] If not, is it not possible that Great Britain, France, and Germany, being on friendly terms with each other, might arrange some equation of naval armament, not by way of a binding contract, but by way of friendly collaboration, to keep the expenditure on their respective navies within reasonable limits? The question cannot, however, be finally and successfully dealt with without taking into consideration the requirements of the growing sea-borne trade of a nation which is obliged to rely for the coaling of its fleets, official and commercial, on foreign and possibly hostile ports of call. So long as the closing of these ports by Great Britain and France would paralyse German sea-borne trade, and make nearly every German ship in case of war with this country

> "As idle as a painted ship
> Upon a painted ocean,"

we shall probably have to reckon with a policy in which the creation of a powerful navy has a definite object. If that object could be attained by a pacific "give and take" arrangement, proportional reduction of armaments might form part of the combination.

[1] Compare *Vœu* No. 3, adopted at The Hague Conference of 1899, p. 254.

Judging by Prince von Bülow's declaration in the Reichstag on April 30, 1907, no measure in the sense of a contractual reduction of armaments is likely to result from the second Hague Conference. The formation of an international expert committee, to consider the subject and report upon it to a later Hague Conference, might be a means of giving at least partial satisfaction to public opinion, which in most countries does not seem convinced that a serious effort is being made to arrest and still less to reduce military and naval expenditure.[2]

[2] See suggested Form of Agreement, p. 182.

# XXI

# CONTRACTUAL PRESERVATION OF THE *STATUS QUÔ*

EXAMPLES of general Truces among Powers for a period of years do not abound. On the other hand, every international arrangement for the purpose of respecting the *status quô* anywhere is in the nature of a truce within the scope of its objects.

The Treaties of Ratisbon (August 15, 1684) provided, after settlement of certain disputed points, for a suspension of warfare between Louis XIV. and the Emperor on the one hand, and King Charles of Spain on the other, for twenty years. Territorial details were to be settled by Commissioners, and certain differences, if they arose, by arbitration.

The Holy Alliance (Sept. 14–16, 1815) was more ambitious and less precise. Its object was to proclaim the fraternity of nations in the spirit of Christianity, and to bind the parties to respect each other's just rights, and assist each other in maintaining them. Most of the sovereigns of Europe joined it, including the British Prince-Regent, in so far as a constitutional sovereign could join in a personal undertaking by sovereigns.

The Monroe Doctrine is a policy of insuring the maintenance of the territorial *status quô* throughout the American continent, which has thus far preserved it from the scourge of great armies and navies. If necessary, the leading Republics of South and Central America would no doubt further insure respect for it by Treaty.[1]

Conventions for the recognition of spheres of interest serve as limitations to expansion as between neighbouring or rival

[1] The Congresses of American Republics, the third of which met at Rio de Janeiro on July 21, 1906, and which Mr. Root, the U.S. Secretary of State, attended, are based on the principle of a common general interest.

States, and are also in the nature of agreements for the maintenance of the *status quô*.

The Anglo-Japanese Treaty of August 12, 1905, in setting out its objects as follows:—

> "(*a*) The consolidation and maintenance of the general peace in the regions of Eastern Asia and India;
> "(*b*) The preservation of the common interests of the Powers in China, of insuring the independence and the integrity of the Chinese Empire, and the principle of equal opportunities for the commerce and industry of all nations in China;
> "(*c*) The maintenance of the territorial rights of the High Contracting Parties in the regions of Eastern Asia and of India, and the defence of their special interests in such regions,"

is a treaty for the maintenance of the *status quô* in certain parts of Asia, in which the parties to it have dominant interests. The same principle underlies different other self-denying arrangements and declarations made by the Powers with reference to Chinese integrity.

The Treaty of Algeciras is essentially a generalisation of the Franco-German agreement of September 28, 1905, by which all the Powers represented agree to respect the territorial integrity of Morocco, subject to a possible intervention limited to the purpose of preserving order within it. The Conference and Treaty are of the greatest value for international stability as an acknowledgment by the Great Powers of the common rights of all States, great and small without distinction, in the available markets of the world, an assertion of the principle that they cannot be closed for the benefit of any single nation.

With these precedents and current instances of tendency to place the territorial relations of the Powers on a permanent footing of respect for the existing *status quô*, it seems possible for an International Conference to go beyond the mere enunciation of principles, and to take a step towards their practical realisation, by agreeing to respect the territorial *status quô* throughout the world during a period of years. Such an agreement would necessarily be coupled with a provision for the calling together of the Powers at the instance of any Power whom circumstances compelled to interfere with it, and for arbitration, in accordance with the Rules laid down in the Treaty on any question of its construction (interpretation), or on any details of carrying out its provisions.[1]

[1] See suggested form of treaty on the subject, p. 153.

# XXII

# PRINCIPLE OF THE "OPEN-DOOR"

THE discussion on the question of the "open-door" in connection with the Morocco difficulty, has been useful in calling general public attention once more to the undesirability of allowing any single Power to exclude other nations from trading on territory, over which it may be called to exercise a protectorate, especially if equality of treatment of foreign trade was practised by the authority ruling over the territory in question before the practical annexation which goes by the name of protectorate.

The habitable parts of the world are a limited area, exclusion from any of which is a diminution of the available markets of the nations excluded. Every Power is, therefore, rightfully interested in the prevention of such exclusion.

The United States Government in 1899 called attention to the subject as regards China, without, be it said however, going into any question of principle.

In a communication to the Foreign Office, dated September 22, 1899, Mr. Choate reminded Lord Salisbury that the British Government, while conceding to Germany and Russia the possession of "spheres of influence or interest" in China, in which they were to enjoy special rights and privileges, particularly in respect of railroads and mining enterprises, had at the same time sought to maintain the "open-door" policy, that is, to secure to the trade and navigation of all nations equality of treatment within such "spheres." The maintenance of this policy, Mr. Choate said, was equally desired by the United States Government. Though the latter would not commit itself to the recognition of any exclusive rights of any Power within, or control

over, any portion of the Chinese Empire under such agreements as had been made, it could not conceal its apprehension that difficulties might arise between the Treaty Powers, imperilling the rights secured to the United States by its Treaties with China. His Government thought that danger of international irritation might be removed by declarations being made by each Power claiming a "sphere of interest" in China, in some form to this effect:—

"1. That it will in no wise interfere with any Treaty port or any vested interest within any so-called 'sphere of interest' or leased territory it may have in China.

"2. That the Chinese Treaty Tariff for the time being shall apply to all merchandise landed or shipped to all such ports as are within such 'sphere of interest' (unless they be free ports), no matter to what nationality it may belong, and that duties so leviable shall be collected by the Chinese Government.

"3. That it will levy no higher harbour dues from another nationality, frequenting any port in such 'sphere,' than shall be levied on vessels of its own nationality—and no higher railroad charges over lines built, controlled, or operated within its 'sphere' on merchandise, belonging to citizens or subjects of other nationalities, transported through such spheres, than shall be levied on similar merchandise belonging to its own nationals transported over equal distances."

There was strong reason, Mr. Choate continued, to believe that the Governments of Russia and Germany would co-operate in such an understanding. Under a recent Ukase the Emperor of Russia had declared the port of Talienwan open to the merchant ships of all nations during the whole term of the lease under which it was to be held by Russia, and Germany had declared Kiao-Chao a "free port."

On September 29, 1899, Lord Salisbury replied that the policy consistently advocated by Great Britain was one of securing equal opportunity for the subjects or citizens of all nations in regard to commercial enterprise in China, and that from this policy H.M. Government had no intention or desire to depart.

On November 30, 1899, Lord Salisbury informed Mr. Choate that H.M. Government were prepared to make a declaration in the sense desired by the United States Government "in regard to the leased territory at Wei-hai-Wei and all territory in

China, which may hereafter be acquired by Great Britain by lease or otherwise, and all spheres of interest now held or which may hereafter be held by her in China, provided that a similar declaration be made by the other Powers concerned."

Before January 5, 1900, all the Powers concerned had subscribed to the declaration in question, which thus became binding among them.

In further confirmation, and no doubt with a view to giving still greater precision to the above principles, the British and German Governments on October 16, 1900, signed the following agreement :—

"Her Britannic Majesty's Government and the Imperial German Government, being desirous to maintain their interests in China and their rights under existing Treaties, have agreed to observe the following principles in regard to their mutual policy in China :—

"1. It is a matter of joint and permanent international interest that the ports on the rivers and littoral of China should remain free and open to trade and to every other legitimate form of economic activity for the nationals of all countries without distinction ; and the two Governments agree on their part to uphold the same for all Chinese territory as far as they can exercise influence.

"2. Her Britannic Majesty's Government and the Imperial German Government will not, on their part, make use of the present complication to obtain for themselves any territorial advantages in Chinese dominions, and will direct their policy towards maintaining undiminished the territorial condition of the Chinese Empire.

"3. In case of another Power making use of the complications in China in order to obtain under any form whatever such territorial advantages, the two Contracting Parties reserve to themselves to come to a preliminary understanding as to the eventual steps to be taken for the protection of their own interests in China.

"4. The two Governments will communicate this agreement to the other Powers interested, and especially to Austria-Hungary, France, Italy, Japan, Russia, and the United States of America, and will invite them to accept the principles recorded in it."

This agreement was simultaneously communicated by the British and German Governments to the Powers mentioned in Clause 4. The principles "recorded in it" were duly accepted by them all.

The "open-door" question was brought up again in connection with Morocco. Under Article IV. of the joint declaration

of April 8, 1904, signed on behalf of Great Britain and France, it was agreed that "the two Governments, being equally attached to the principle of commercial liberty both in Egypt and Morocco, declare that they will not in those countries countenance any inequality either in the imposition of customs duties or other taxes, or railway transport charges. . . . This mutual engagement shall be binding for a period of thirty years."

Negotiations between France and Germany, which arose out of a controversy in respect of the same subject-matter, resulted in the signing, on September 28, 1905, of a joint note concerning the matter to be submitted to the Conference on Morocco affairs, which included the "fixation of certain principles for the purpose of preserving economic freedom," in other words, the "open-door" generally without any restriction as to time.

At an earlier date, Article I. of the General Act of the Berlin Conference of 1885 on the *régime* to be applied in the Congo basin, declared, "The trade of all nations shall enjoy complete freedom."

It is seen that the principle of the "open-door" has already been consistently applied in connection with certain non-European areas. As these areas are practically the only areas which of late years have come within the scope of European regulation, the time seems to be approaching when the principle might be declared to be of general application.[1]

[1] See draft clauses on the subject, p. 153

From the point of view of diminishing the possible causes of conflict among nations, the adoption of the principle as an international contractual obligation would be of great utility. While putting an end to the injustice of exclusion, it would obviously reduce the danger of nations seeking colonial aggrandisement with a view to imposing exclusion, and thus one of the chief temptations to colonial adventure would be eliminated.

## XXIII

# EFFECT OF "MOST-FAVOURED-NATION" CLAUSE IN COMMERCIAL TREATIES

THE most-favoured-nation clause is one which it has become customary to insert in treaties of commerce, providing that if any reductions of tariff or other advantages are granted by either co-contracting State to any third State, the other shall have the benefit of them. In Europe this clause has been uniformly treated as applying to all reductions of tariff without distinction. The United States interpretation, on the other hand, distinguishes between reductions of a general character and reductions made specifically in return for reductions by some other State. The latter do not come within the operation of the clause, and a co-contracting State is only entitled to obtain extension of them to itself by granting similar concessions. In other words, special concessions to any co-contracting State are only allowed gratuitously to a third co-contracting State, when nothing is given for them, the clause not covering advantages granted in return for advantages.

In a despatch of July 17, 1886, to the American Minister in China, Mr. Bayard explained the American view in the following terms:

"In its commercial aspects the expediency of an unqualified favoured-nation clause is questionable. The tendency is towards its formal qualification, by recognising in terms what most nations hold in fact and in practice, whether the condition be expressed in the clause or not, that propinquity and neighbourliness may create special and peculiar terms of intercourse not equally open to all the world; or by providing that the most-favoured treatment, when based on special or reciprocal concessions, is only to be extended to other Powers on like conditions."[1]

This is still the United States view, as is set out in a luminous article in the November (1905) number of the *North American Review*, on "The Alternative of Reciprocity Treaties, or a Double

[1] See Wharton's *Digest on the International Law of the United States*, sec. 134. It is interesting to recall the interpretation by the United States Government of the 8th Article of the Convention for the cession of Louisiana, providing that after the expiration of twelve years from the date of that Treaty, the ships of France should be treated upon the footing of the most favoured nation in the ports of the ceded territory. It was contended by France that this was an absolute agreement, irrespective of the conditions upon which favours were granted to other nations, and that, therefore, when a favour should be granted to another nation for a consideration (reciprocal or otherwise), or upon a condition, France was entitled to enjoy the same favour without consideration or condition. This was denied by the United States. The claim was abandoned by France in the Treaty of 1831 (Bancroft Davis, *Treaties of the United States*, 1873, p. 127).

Tariff," by Mr. John Osborne, chief of the Bureau of Trade-Relations, State Department, and late Secretary of the Reciprocity Commission, a gentleman eminently competent to describe the contemporary American standpoint. Mr. Osborne maintains that "it is evident that the gratuitous extension to third Powers of commercial advantages exchanged in reciprocity between two countries, is absolutely inconsistent with the true principles of reciprocity as understood in the United States; it would not only seriously impair and even tend to destroy the value of the original grant, but it would also involve duty reductions upon the entirety, or, at least, the bulk of importations from the world, of the articles of merchandise affected, thus constituting a serious sacrifice in national revenues."

This is an argument of policy, and not one, properly speaking, of interpretation or construction. No strictly judicial argument can be urged in support of the American view. Whether a reduction "bought," as it were, by a counter-reduction is affected by a "most-favoured-nation" clause depends, from a judicial point of view, solely on the wording of the clause.

There seemed to be a possibility that this would become the judicial construction in America under a decision of the United States Supreme Court (Bartram *v.* Robertson), but the question a few months later came up again in Whitney *v.* Robertson (Supreme Court of the United States, 1887, 124 United States, 190), when the official view, on the contrary, was strongly endorsed. The plaintiffs in the action were merchants doing business in the city of New York. They imported a large quantity of sugars, produce of the island of San Domingo, similar in kind to sugars produced in the Hawaiian Islands, which were admitted free of duty under a treaty with the government of those islands. The treaty provided for the importation into the United States, free of duty, of various articles, "the produce and manufacture of those islands, in consideration, among other things, of like exemption from duty, on the importation into that country, of sundry specified articles which are the produce and manufacture of the United States." The first two articles of the treaty, which recited the reciprocal engagements of the two countries, declared that they were made in consideration "of the rights and privileges" and "as an equivalent therefor," which the one conceded to the other. The plaintiffs relied for a like exemption of the sugars imported

by them from San Domingo upon Article IX. of the treaty with the Dominican Republic, which is as follows: "*No higher or other duty shall be imposed* in the importation into the United States of any article of growth, produce, or manufacture of the Dominican Republic, or of her fisheries; and no higher or other duty shall be imposed on the importation into the Dominican Republic of any article the growth, produce, or manufacture of the United States or their fisheries, *than are or shall be payable on the like articles, the growth, produce, or manufacture of any other* foreign country, or its fisheries." In Bartram *v.* Robertson, the Supreme Court had held that brown and unrefined sugars, the produce and manufacture of the island of St. Croix, a Danish possession, were not exempt from duty by force of the treaty with Denmark, though similar goods from the Hawaiian Islands were thus exempt. The first article of the treaty with Denmark provided that the contracting parties should not grant "any particular favour" to other nations, in respect to commerce and navigation, which should not immediately become common to the other party, who should *enjoy the same freely if the concession were freely made, and upon allowing the same compensation if the concession were conditional.* Article IV. provided that no *higher or other duties* should be imposed by either party on the importation of any article of its produce or manufacture, into the country of the other party, *than were payable on like articles, being the produce or manufacture of any other foreign country.* The Supreme Court had held that—

"Those stipulations, even if conceded to be self-executing by the way of a proviso or exception to the general law imposing the duties, do not cover concessions like those made to the Hawaiian Islands for valuable consideration. They were pledges of the two contracting parties, the United States and the King of Denmark, to each other, that in the imposition of duties on goods imported into one of the countries which were the produce or manufacture of the other, there should be no discrimination against them in favour of goods of like character imported from any other country. They imposed an obligation upon both countries to avoid hostile legislation in that respect. But they were not intended to interfere with special arrangements with other countries founded upon a concession of special privileges."

In Whitney *v.* Robertson, counsel for the plaintiffs contended that the omission from the treaty with the Republic of San Domingo of the Danish-American provision as to free concessions, and concessions upon compensation, precluded any concession in respect of commerce and navigation by the U.S. Government to another country without that concession being at once extended to San Domingo. The Supreme Court, however, held that the absence of this provision did not change the obligations of the United States; that Article IX. of the treaty with San Domingo was "substantially like Article IV. in the treaty with the King of Denmark." It was a pledge of the

contracting parties that there should be no discriminating legislation against the importation of articles which were the growth, produce, or manufacture of their respective countries, in favour of articles of like character imported from any other country, but "it had no greater extent." "It was never designed to prevent special concessions, upon sufficient considerations, touching the importation of specific articles into the country of the other." "*It would require the clearest language to justify a conclusion* that the U.S. Government intended to preclude itself from such engagements with other countries, which might in the future be of the highest importance to its interests."

With all respect to the great authority of the decisions of the United States Supreme Court, the language of the Treaty in question seems of the clearest, and diametrically opposed to its ruling.

The treaty regulating the trade relations between Great Britain and the United States (July 3, 1815), continued in force[1] and reported in an official return to the British Parliament, Commercial No. 4, 1907, to be in operation between the two countries down to January 1, 1907, is practically in the same terms, providing that—

"No higher or other duties shall be imposed on the importation into the territories of His Britannic Majesty in Europe of any articles of growth, produce, or manufacture of the United States, and *no higher or other duties shall be imposed* in the importation into the United States of any articles the growth, produce, or manufacture of His Britannic Majesty's territories in Europe, *than are or shall be payable* on the like articles, being the growth, produce, or manufacture of any foreign country" (Art. II.).

[1] Continued in force by Treaties of October 20, 1818, and August 6, 1827, the latter terminable after twelve months' notice.

The form adopted in the treaty between Great Britain and Uruguay of July 15, 1899, leaves nothing to construction; it specifically restricts the application of the clause:—

"It was also agreed that the stipulations contained in the Treaty which is to be renewed *do not include cases in which the Government of the Oriental Republic of Uruguay may accord special favours, exemptions, and privileges to the citizens or products of the United States of Brazil, of the Argentine Republic, or of Paraguay in matters of commerce.* Such favours cannot be claimed on behalf of Great Britain on the ground of most-favoured-nation rights as long as they are not conceded to other States. It is, nevertheless, understood that the said special favours, exemptions, and privileges shall not be capable of application to products similar to those of Great Britain, nor be extended to navigation.

The same may be said of the Franco-German Treaty of Frankfort (May 10, 1871). Article II. of that treaty provides as follows:—

"The treaties of commerce with the different States of Germany having been annulled by war, the French and German Governments will base their commercial relations upon the system of reciprocal treatment on the footing of the most favoured nation.

"This rule shall not apply, however, to the *favours* which either of the Contracting Parties, by commercial Treaties, has granted or shall grant to States other than the following:—England, Belgium, Holland, Switzerland, Austria, and Russia. . . .

"Nevertheless, the French Government reserves to itself the faculty to establish on German vessels and their cargoes, tonnage and flag duties, under reserve that these duties shall not be higher than those which *are* imposed upon vessels and cargoes of the above mentioned nations."

The German-Austro-Hungarian Treaty of commerce of December 6, 1891, amended and completed by that of January 25, 1905, provides that *no more favourable conditions in respect of "import, export, or transit" duties shall be granted by either Contracting Party to a third Power than are accorded to the other Party*, and that *any concessions* of this kind made to a third Power *shall at once be applied to the other* (Art. II.), any dispute relating to this provision to be referred to arbitration (Art. XXIII.). This seems equally clear in the contrary sense.[1]

In Europe the American view has found a supporter (semble) in Prof. F. de Martens, who considers that a distinction must be made between a case where a commercial advantage is granted purely and simply, and a case where there is simply an exchange of *bons procédés* or a *dédommagement*. "In the former case alone have other States a right to claim the same advantage. To grant it in the second would be contrary to the principle of the reciprocity of commercial obligations."[2]

The same opinion was also arrived at much earlier by a distinguished French writer, M. Hautefeuille, who, in answer to the question of whether the condition of being treated as the most favoured nation only carried the advantages existing at the time of the signature of the treaty, or comprised those which should be subsequently conceded to another State, answered that the

[1] The forms of most-favoured-nation clauses vary considerably. That of the Treaty of Commerce and Navigation between Great Britain and France of February 28, 1882, runs:

"Each of the High Contracting Parties engages to give the other immediately and unconditionally the benefit of every favour, immunity, or privilege in matters of commerce or industry which *may have been or may be conceded* by one of the High Contracting Powers to any third nation whatsoever, whether within or beyond Europe."

The British Treaty of Commerce with Honduras of January 21, 1887, provides:

"The High Contracting Parties agree, that in all matters relating to commerce and navigation, any privilege, favour, or immunity whatever which either contracting party *has actually granted or may hereafter grant* to the subjects or citizens of any other State shall be extended immediately and *unconditionally* to the subjects or citizens of the other contracting party; it being their intention that the trade and navigation of each country shall be placed in all respects by the other on the footing of the most favoured nation" (Article I.).

The Anglo-Roumanian Treaty of August 13, 1892:

"The subjects, vessels, and goods, produce of the soil and industry of each of the two High Contracting Parties shall enjoy in the dominions of the other *all* privileges, immunities, or advantages *granted to the most favoured nation*" (Article I.).

[2] *Droit International* (1886), ii. p. 322. "At the present day, when national interests are so entangled and complex," says M. Lehr, "it is always a serious matter to bind oneself in advance by a clause which is vague and general, and the eventual bearing of which cannot be estimated. There have been several instances in the course of the last few years in which a Power in the negotiation of a treaty has been in the necessity of refraining from granting concessions, because being extended by virtue of the clause, without any compensation whatever to a whole series of other countries, they would have been disastrous to the national industry." See Ernest Lehr, *Revue de Droit International*, 1893, p. 315.

clause must be considered as implying everything that existed at the moment when signed, but that it could not be considered to extend to anything later in date.[1]

[1] *Histoire des Origines*, etc. (1858), ii. pp. 300, 301.

It is evident that it will be necessary in future treaties of commerce to be careful to provide against the possibility of a construction which might frustrate the very objects for which most-favoured-nation clauses are resorted to, namely, to prevent any third Power from enjoying *special advantages*. Meanwhile the interest of stable international relations requires that the sense of the existing terminology of the clause should be defined.[2]

[2] See draft clause on the subject, p. 159.

# SUGGESTED DRAFT TREATIES AND CLAUSES

(N.B.—*As already stated in the Preface, these drafts are mere endeavours to indicate with precision and in detail the contractual form the international regulation of different matters of international practice might take. Several necessarily overlap, and in no sense are the drafts to be regarded as forming a complete whole.*)

# 1. DRAFT ARBITRATION TREATY

## to include Vital Interests and National Honour

H.M. . . . etc. etc.

Animated by the desire to further extend the application of the principles agreed to in the Convention for the pacific settlement of International Disputes of July 29, 1899, and to give to them the fullest practical effect existing circumstances will permit;

Trusting that, in case such further extension should prove satisfactory after a period of experience, it will be continued for a further period, and be followed by any further extension which may seem feasible;

Desiring to conclude a Convention to this effect, have appointed as their Plenipotentiaries, etc. etc. etc., who have agreed as follows:—

1. The High Contracting Parties undertake to submit to arbitration by The Hague Court all differences not affecting the internal laws or institutions or independence or territorial integrity of any High Contracting Party which may arise between them, and which may not have been settled by diplomacy, in accordance with the terms and conditions set out in the next following articles.

2. For matters of a judicial character, or relating to the construction (interpretation) of treaties, the Court shall be composed in accordance with Article XXXII. of the said Convention.

Subject to an alteration to reduce the number of arbitrators to be appointed under the 3rd section of Article XXXII., which is as follows:—Art. XXXII.—The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Act. Failing the constitution of the Tribunal by direct agreement between the parties, the following course shall be pursued: Each party appoints two arbitrators, and these latter together choose an umpire. In case of equal voting, the choice of the umpire is intrusted to a third Power, selected by the parties by common accord. If no agreement is arrived at on this subject, each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

3. If in the judgment of one or other of the High Contracting Parties a question may appear to involve a vital interest or the national honour, or to be of too momentous a character to be submitted to decision under Article XXXII. of the said Convention—

(*a*) The Court shall be composed of Judges appointed by the High Contracting Parties without an Umpire, and in such number, not exceeding three each, as either Party may demand. The Judges may be nationals of the State appointing them.

(*b*) The award will not finally close the dispute unless the Judges, if two, are agreed, or, if four, one of two, or, if six, two of three of either side concur with those of the other side in their decision.

(*c*) Where a case is submitted to two Judges only, and they do not agree, or to four who are equally divided, or to six who are equally divided, or of whom only one concurs with the other side, or where the Judges take more than two views, or in any case whatsoever in which the majority provided for in sub-section (*b*) is not obtained, the Judges, nevertheless, give their judgments separately and in writing, in accordance with Art. LII.[1] of the said Convention. These judgments shall then be submitted to the mediation of a friendly Power to be chosen by the Parties[2]; in case of difference in such choice, to the President of the Swiss Confederation. The mediator shall appoint a jurist to examine and report on the judgments, and this report shall be submitted to the Judges to enable them to reconsider their decisions. The jurist who shall have made the report shall be present at the sittings for such reconsideration, with power to deliberate but not to vote. The period for which the mandate conferred on the mediator shall be given shall be thirty days, as provided by Art. VIII.[3] of the said Convention.[4]

(*d*) If no agreement shall be arrived at after submission and discussion of the mediator's report, the International Bureau[4] at The Hague shall immediately on the close of the final sitting

[1] Art. LII.—The award given by a majority of votes is accompanied by a statement of reasons. It is drawn up in writing and signed by each member of the Tribunal. Those members who are in the minority may record their dissent when signing.

[2] Art. III.—Independently of this recourse, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative and so far as circumstances may allow, offer their good offices or mediation to the States at variance. Powers, strangers to the dispute, have the right to offer good offices or mediation even during the course of hostilities. The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

[3] Art. VIII.—The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:—In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations. For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it. In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

[4] Art. XXII.—An International Bureau established at The Hague, serves as record office for the Court. This Bureau is the channel for communication relative to the meetings of the Court. It has the custody of the archives, and conducts all the administrative business. The Signatory Powers undertake to communicate to the International Bureau at The Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by special Tribunals. They undertake also to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

have the protocol[1] of submission, the respective judgments, the report thereon, and the respective final decisions printed and made public in accordance with Art. LIII.[2] of the said Convention.

[1] See p. 26.

[2] Art. LIII.—The award is read out at a public meeting of the Tribunal, the agents and counsel of the parties being present or duly summoned to attend.

4. The High Contracting Parties undertake to give every facility in their power to the Judges and the mediator to ascertain the facts, and to do nothing pending arbitration and mediation which may in any way alter the situation of the matter at issue.

5. This Convention shall be binding on the High Contracting Parties for a period of ten years, and shall run on thereafter for further periods of ten years, unless notice of its termination be given by any Party, in which case it shall continue to be binding only as among the other Parties. Notice of one year shall be necessary to enable any Party to withdraw from it.

In faith of which, etc. etc.

## 2. CLAUSE TO REPLACE EXCEPTION OF NATIONAL HONOUR AND VITAL INTERESTS UNCONDITIONALLY

The H.C.P. agree to refer all difficulties which it has not been possible to settle by diplomatic methods, and *affecting neither the independence nor territorial integrity*[1] *nor the internal laws or institutions* of any such H.C.P., nor matters involving prior arrangements of any H.C.P. with Third Parties, to arbitration by The Hague Court.[2]

[1] See p. 14.

[2] The Inter-Parliamentary Conference has drawn up the following Model Scheme of an Arbitration Treaty to be submitted to the second Hague Conference :—

"Art. I.—The High Contracting Parties engage to submit to the permanent Arbitration Court established at The Hague by the Convention of July 29, 1899, all differences that may arise between them, *so far as they do not affect either their independence or vital interests, or the sovereign authority of the respective countries, or the interests of third Powers.*

"Art. II.—Each Party shall decide for itself whether the difference concerns its independence, its sovereign authority, its vital interests, or those of third Powers, and is consequently among those which, according to the preceding Article, are excepted from obligatory Arbitration.

"Art. III.—The High Contracting Parties engage themselves not to make use of Art. II. in the following cases :—

"(1) Contestations respecting the Interpretation and Application of Agreements concluded or to be concluded and enumerated below :—

(A) Commercial and Navigation Treaties ;
(B) Agreements relating to International Protection of Workmen ;
(C) Postal, Telegraphic (including wireless telegraphy), and Telephonic Agreements ;
(D) Agreements relating to the Protection of Submarine Cables ;
(E) Agreements relating to Railways ;
(F) Agreements and Regulations relating to the means of preventing Collisions of Vessels at Sea ;
(G) Agreements relating to Literary and Artistic Copyright ;
(H) Agreements relating to the Protection of Industrial Property (Patents, Trade Marks, and Firms) ;
(I) Agreements relating to the Management of Commercial and Industrial Companies ;
(K) Monetary and Metrical Agreements (weights and measures) ;
(L) Agreements relating to reciprocal gratuitous assistance to destitute sick people ;
(M) Sanitary Agreements, Agreements relating to cattle plagues, phylloxera, and similar contagious diseases ;
(N) Agreements relating to matters of International Law ;
(O) Agreements concerning Civil and Criminal Proceedings ;
(P) Agreements of Extradition.

"(2) Regulations on the fixing of frontiers.

"(3) Questions relating to claims for damages when the principle of Indemnity is acknowledged by the parties.

"Art. IV.—The present Agreement will be applicable even if the questions which may occur should arise from facts preceding its conclusion.

"Art. V.—If it should be a case for Arbitration, the High Contracting Parties, in default of contrary compromising clauses, will comply respecting anything concerning the appointment of Arbitrators with the regulations established by The Hague Conference, dated July 29, 1899.

"Art. VI.—The Arbitration sentence indicates the dates on which it has to be executed.

"Art. VII.—The compromise provided by Art. 31 of the Convention of July 29, 1899, fixes a term within which shall take place the exchange between the litigants of memoranda and documents referring to the object of litigation. This exchange will, in any case, be terminated before the beginning of the Meetings of the Arbitration Tribunal. These stipulations do not in any way prejudice what has been proposed by The Hague Convention with reference to the second phase of the Arbitration procedure (Art. 39), particularly the dispositions of Articles 43 to 49.

"Art. VIII.—The duration of the present Treaty is not limited, but each of the High Contracting Parties can withdraw at the end of 10 years by means of notice given a year in advance."

See my observations on this scheme, p. 13.

# 3. MODEL PROTOCOL OF SUBMISSION FOR CASES OF MINOR IMPORTANCE

The Government of.....and the Government of..... having agreed by a Convention, dated....., to settle by arbitration difficulties of the nature of that which has arisen between them with reference to.....; and having jointly decided upon the appointment, of....., who has accepted the said appointment as Arbitrator therein, have concurred in the adoption of the following procedure; subject thereto, the provisions of the Hague Peace Convention of 1899 to be observed:—

Art. I.—The decision of the Arbitrator shall be final, unless the indemnity exceed the sum of £..... If it should exceed this sum, the award shall, nevertheless, be final, unless protested against within..... from delivery.

Art. II.—The plaintiff H.C.P. shall, within a period of (say) one month from the signature of the present Protocol, communicate to the defendant H.C.P. a memorandum containing a statement of the facts, as far as possible in tabular form, and a, as far as possible, detailed assessment of the indemnity claimed, with copies of all documentary evidence to be adduced in support thereof. The defendant H.C.P. shall have a period of (say) one month from the date of receipt of the said memorandum, etc., in which to deliver a memorandum and copies of any documentary counter-evidence in reply. The plaintiff H.C.P. shall have, from receipt of the latter, a period of (say) one month to present a counter-reply.

Art. III.—The cases and evidence, as provided for in Art. II., shall be printed by the plaintiff H.C.P. and laid before the Arbitrator within (say) one month after receipt of the counter-reply.

Art. IV.—If, after submission of the said cases and evidence, either H.C.P. shall apply for permission to present further materials for the Arbitrator's consideration, this shall be done by a further printed statement of facts, such further statement to be simultaneously presented to the Arbitrator and communicated to the other H.C.P. within fifteen days from the date at which, under Art. III., the cases and evidence were laid before the Arbitrator. The other H.C.P. shall have fifteen days to reply thereto. Thereafter no further communications on either side shall be made to the Arbitrator, except in accordance with Art. V.

Art. V.—The Arbitrator shall be entitled, at any time until delivery of his award, to ask for such explanations from either or both H.C.P. as he may deem fit.

Art. VI.—The costs of the arbitration shall be fixed by the Arbitrator, and shall be borne share and share alike by the H.C. Parties.

Art. VII.—The Arbitrator shall deliver his decision within a period of (say) three months from the date of the receipt by him of the last communication made to him by either H.C.P. in accordance with the terms of the present Protocol.

Art. VIII.—A copy of the award shall be delivered to each H.C.P., the original to be kept in the archives of the Hague Court.

## 4. CLAUSE AS TO POSSIBLE INQUIRY AND ADVISORY[1] POWERS TO BE GIVEN TO THE HAGUE COURT ITSELF

In case any difficulty involving principles of a legal character may not appear to either H.C.P. susceptible of final decision by arbitration, a Commission composed of Commissioners in such number as either H.C.P. may demand, may be appointed to examine the circumstances thereof.

[1] See p. 13.

In their report the Commissioners may make suggestions for settlement.

At the instance of either, or any H.C.P. the Commissioners shall deliberate with closed doors.

No proceedings or opinions of the Commissioners, nor any report, provisional or final, shall be made public except by consent of all the H.C.P. concerned.

OR

It shall be in the power of the H.C.P. to jointly refer questions of a legal character between or among them to the Hague

Court for examination, report and advice without the decision thereof having a binding character for the said High Contracting Parties.

# 5. DRAFT CONVENTION

## for Establishing a League for the Preservation of the *Status Quô* and the "Open Door"

H.M. . . . etc. etc.

Having in view the universal interest attaching to all efforts to retard the growth of armaments, and to promote their ultimate reduction when circumstances shall permit thereof;

Having in view also that, though the Powers were not successful in arriving at any agreement as to the reduction of armaments at the Conference of 1899, they were nevertheless unanimous in the adoption of the following resolution: "The Conference is of opinion that the restriction of military budgets, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind";[1]

With the object of giving effect to the above resolution, in default of a direct undertaking among the Powers to restrict their military budgets, it appearing desirable to the Powers to endeavour to promote the same object by indirect means, and believing that by making provision, as far as possible, for the peaceable adjustment of conflicts involving vital interests or the national honour, and by restricting the growth of questions dangerous for international peace, the need for increasing the burden of armaments may diminish, and their ultimate reduction be rendered possible;

And whereas by a separate agreement the Powers have dealt with the peaceable adjustment of international conflicts generally;

[1] The Conference also adopted the following *vœu*:—
"That governments, taking into account the proposals made at the Conference, should examine the possibility of an understanding concerning the limitation of military and naval armaments, and of war budgets."
See p. 123 *et seq.*

And whereas conflicts arise chiefly out of matters of rivalry connected with territorial aggrandisement and commercial expansion, and more especially out of the possible exclusion, for the benefit of particular States, of the trade and enterprise of other States from existing or possible markets ;

And whereas the Powers desire to suspend all differences between them for a short experimental period, without waiving or abandoning any claims they may consider themselves entitled to assert ;

And whereas in China, Central Africa, and Morocco the principle of equality of treatment, without distinction of nationality, has been permanently adopted as a fundamental condition in connection with economic expansion in these regions, and whereas most of the Powers have already expressed their attachment to this principle of equality ; [1]

[1] See pp. 133 *et seq.* 75

And now being desirous of concluding a Convention to these effects, have appointed, etc. etc.

Who, after communication, etc. etc., have agreed on the following provisions :—

1. The High Contracting Parties undertake, during the currency of the present Convention, to respect as between and among them the integrity of their respective dominions, possessions, protectorates, leases, spheres of interest, etc., in Europe and elsewhere.[2]

[2] See pp. 131–132.

2. *By way of guarantee of the above undertaking, the H.C.P. agree to regard a zone on either side of their frontier as neutral. Within this zone no fortifications shall be erected or armed forces maintained. Contiguous Powers shall arrange the width of this zone between them in accordance with existing circumstances and the configuration of the soil.*[3]

[3] The principle of this article has little chance of being adopted, but it is not without precedent, being in actual practice as between Burmah and Siam and as between Sweden and Norway. A "buffer" zone would tend to attenuate the well-known *esprit de frontière*, and to diminish the danger of incidents arising out of it. In particular, it might lessen that suspicious rivalry which leads nations to compete against each other in the exaggeration of their frontier defences.

See pp. 77–78.

3. In case any H.C.P. shall acquire dominion or any dominant influence over territory outside Europe, by way of annexation, protectorate, lease, sphere of influence, or otherwise, such acquisition shall be subject to the condition that absolute equality of treatment, whether by way of import or export duties, concessions, privileges, and in economic matters of all kinds, shall be granted, maintained, or recognised, as the case may be, in regard to the subjects and citizens of all States without distinction.[1]

[1] See p. 133 *et seq.*

4. All matters relating to this Convention shall be centralised at the offices of the Permanent Administrative Council[2] of The Hague Court, and notices of all kinds addressed to the President thereof (the Minister of Foreign Affairs of the Netherlands) shall be considered as given to all the H.C.P. within . . ., after acknowledgment by him of receipt thereof.

[2] Art. XXVIII.—A permanent Administrative Council composed of the Diplomatic Representatives of the Signatory Powers accredited to The Hague, and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers. This Council will be charged with the establishment and organisation of the International Bureau, which will be under its direction and control. It will notify to the Powers the constitution of the Court, and will provide for its installation. It will settle its Rules of Procedure and all other necessary Regulations. It will decide all questions of administration which may arise with regard to the operations of the Court. It will have entire control over the appointment, suspension, or dismissal of the officials and employés of the Bureau. It will fix the payments and salaries, and control the general expenditure. At meetings duly summoned, the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes. The Council communicates to the Signatory Powers without delay the Regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the Administration, and the expenses.

5. This Convention shall be binding for a period of ten years.

It shall be in the power of any H.C.P. to withdraw from it, after giving notice of withdrawal of not less than one year before expiry of the tenth year. In default of such notice being given, the Convention shall continue to bind the H.C.P. for further periods of five years, on the same conditions. On receiving any notice of withdrawal, the President of the Permanent Administrative Council shall immediately call a meeting thereof and inform it of the notice received. The Council shall meet again without special convocation . . . thereafter. If no notice of withdrawal on the part of any other H.C.P. shall meanwhile have been received, the Convention shall *ipso facto* continue binding on all the other H.C.P. for a further period, provided, however, that at the request of any H.C.P. before expiry of the ninth year, and if notice of any withdrawal shall have been received during . . . after expiry of the ninth year, a meeting of the H.C.P. shall be called to consider any matters in connection therewith.

6. Withdrawal of any H.C.P. or termination of the present Convention shall not release any H.C.P. from the obligations resulting under Art. III. from any acquisition made during the currency hereof.

7. During the currency of this Convention, full force and effect shall be given to the "Arbitration Treaty, including vital interests and national honour"; but termination of the present Convention shall not entail or imply termination of the said Treaty of Arbitration.

In faith of which the Plenipotentiaries, etc.

# 6. CLAUSE AS TO NOTIFICATION OF AREA OF HOSTILITIES

On the outbreak of war the belligerents shall fix the limits of the area and distance from the seat of war within which they will exercise their right of search. This area shall be known as the "area of hostilities." Its limits shall be notified to neutral Powers, and be forthwith binding on them. Outside this area or beyond this distance, production to the belligerent commander of the ship's papers, with a certificate delivered by the public authorities at the neutral port or ports of lading declaring that the destination of the ship is not a belligerent port, and that there are neither unconditional contraband nor belligerent troops on board, shall be an absolute bar to further stoppage.[1]

[1] See pp. 71–72. See also Draft Clauses on Neutrality and Contraband, pp. 160 *et seq.* and 168.

The area may be modified or extended by either belligerent, and on notice being given to neutral Powers, it shall be forthwith binding upon them.[2]

[2] The worst that could happen is that a belligerent should claim the present right of visit and search without restriction of area or distance. See observations Lord Lansdowne addressed to the Russian Government in 1904 (see p. 72) and Prince Bülow to the British Government in 1900 (see p. 71), showing how disturbing to ocean-borne trade is the present absence of any system of notification.

## 7. CLAUSES AS TO FLOATING OR SUBMARINE MINES[1]

1. The use of floating or submarine mines, other than those which can be firmly anchored, is forbidden.

2. No floating or submarine mines of any kind shall be placed beyond the limits of the Territorial Waters of a belligerent State, and then only within the area of hostilities as fixed in the public notification thereof.[1]

[1] See p. 157.

3. The presence of floating or submarine mines in any waters through which the vessels of all nations have a right of passage shall be notified in the same way as blockades, and the rules otherwise applicable to blockades shall be made applicable to them as far as possible.[2]

[2] See p. 59 *et seq.* and p. 165 *et seq.*

4. (Provision for proper indemnities.)

## 8. CLAUSES FOR REFERENCE, AS TO EFFECT OF "MOST-FAVOURED-NATION" CLAUSE, TO THE HAGUE COURT[1]

Whereas any varying interpretation of the most-favoured-nation clause must give rise to instability in the trade relations of co-contracting countries,

It is agreed that—

1. Any State holding itself to be aggrieved by any such interpretation is entitled to cite the co-contracting party before The Hague Court.

2. The signatories hereby accept without reservation the jurisdiction of the said Hague Court in all such matters.[1]

[1] See p. 137 *et seq.*

# 9. FORM OF CONVENTION DEALING WITH PROPOSED ALTERATIONS IN THE RIGHTS AND OBLIGATIONS OF BELLIGERENTS AND NEUTRALS

Considering that, by the Declaration of Paris of 1856, the High Contracting Parties thereto agreed that the neutral flag should cover enemy goods except contraband of war, and that neutral goods under enemy flag, except contraband of war, should not be liable to capture;

And whereas under the existing international practice in war:—

1. Enemy ships are lawful prize, except (*a*) ships of discovery and vessels engaged in local fisheries, (*b*) hospital ships (under the Hague Convention of 1899 on maritime warfare), (*c*) ships protected by days of grace,[1] and (*d*) cartel ships;

2. Enemy cargo on enemy ships is lawful prize, but neutral cargo on enemy ships (except contraband of war) has to be restored to the owners;

3. Neutral vessels, including vessels carrying mails, are liable to visit and search on the high seas, or in the territorial waters of either belligerent, for contraband of war,[2] but enemy cargo on board is not liable to capture;

4. A neutral vessel committing a breach of a blockade provided she has notice thereof, is liable to capture;

5. A neutral vessel, carrying contraband of war to the enemy, is liable to capture, and such liability exists, though the mediate

[1] That is to say, the time it is usual for belligerents to allow trading vessels to leave belligerent ports after the outbreak of hostilities. In the Franco-German War of 1870 the commanding officers of the French Fleet were ordered to grant thirty days' respite to enemy's trading vessels to leave French ports in case they should be there or enter in ignorance after the outbreak of war. The Germans allowed a respite of six weeks for the same purpose.

[2] Except convoyed vessels. Great Britain, however, has never as yet admitted the validity of this exception.

destination be a neutral port, if the ultimate object is delivery to the enemy;[1]

[1] This principle, though Germany, in the controversy with Great Britain on the subject in 1900, denied its universal recognition, could not be disregarded with safety. See p. 93.

6. The sale of arms, ammunition, and any other kind of contraband, by neutral private persons, firms or companies, for use in a pending war, is not a breach of neutrality as between State and State, the remedy being liability to capture and confiscation by capturing belligerents;

7. The public issue of loans on neutral territory for the benefit of either belligerent is not a breach of neutrality.

And whereas by the Treaty of Washington of 1871, Great Britain and the United States of America agreed to observe thereafter, as between them, the following principles:—

"A neutral Government is bound—

"First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use;

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men;

"Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

And whereas the said two High Contracting Parties agreed to bring these rules to the knowledge of other maritime Powers, and to invite them to accede thereto;

And the undersigned High Contracting Powers, have decided to accede to the said rules, and to adopt such measures as the observance of strict neutrality requires;

And whereas a stricter observance of neutrality reduces in proportion the need of belligerent interference to prevent its violation, and it is thought desirable to endeavour to release innocent maritime traffic from visit and search as far as practicable;

The Signatory Powers hereof undertake to observe and enforce as among them the following modifications of the existing practice, which shall, so long as they remain in force, take the place of the said Declaration of Paris, in so far as it is concerned, and of the above-mentioned Washington principles:—

1. The High Contracting Parties undertake, on the outbreak of war, to use the utmost diligence to ensure the observance by their subjects and citizens of strict neutrality towards the belligerents. Any infringement of such neutrality shall be brought, as soon as practicable, by the injured belligerent State to the notice of the neutral Power concerned and of the *International Bureau*[1] at The Hague; and, on the conclusion of the war, all claims on either side, which may not have been settled amicably, shall be adjudicated by the Permanent Court of Arbitration. Such Court shall be composed of judges appointed one by each party, the umpire, if the Parties do not agree in their choice within one month after the conclusion of peace, to be chosen by the President of the Swiss Confederation. To the Court thus composed shall also be referred any difficulties arising out of the application of Art. 12 hereof.

[1] See "Hague Peace Convention," Art. XXII. p. 219.

2. The duties of a neutral State[2] are:

[2] In most countries special legislation would be necessary to give effect to these provisions. Great Britain and the United States alone seem to have any precise enactments to enforce the observance of neutral duties by their subjects and citizens.

(*a*) To prevent the fitting out, arming, and equipping, within its jurisdiction, of any vessel for the purpose of carrying on war against either belligerent, and the departure, from within its jurisdiction, of any such vessel;

(*b*) To prevent belligerent vessels from obtaining within its jurisdiction any supply of arms, ammunition, and of food or coal, subject only as regards food and coal to the right of the neutral

to provide such as may be necessary to enable such vessel to reach the nearest port of its nationality or some nearer neutral destination as hereinafter provided ;[1]

[1] See Art. 7.

(*c*) To forbid any person within its jurisdiction to supply ships, arms, or ammunition to either belligerent by sale or otherwise, enabling it to continue the war ;

(*d*) To forbid the raising, within its jurisdiction, of loans by public subscription for the benefit of either belligerent.

3. The High Contracting Parties shall determine, by a special agreement, the position of vessels officially entrusted with the carrying of the mails.[2]

[2] See p. 103 *et seq.*, and special form of agreement, p. 178.

4. In consideration of these modifications of the existing practice of neutrality, the High Contracting Parties agree to the following modifications in the practice of belligerency :—

(*a*) Each belligerent Power shall, immediately on the outbreak of war, instruct its consular agents at every neutral seaport to place themselves at the disposal of the consular agents of the other belligerent Power or Powers. To these agents all ships' documents shall be communicated, and, in conjunction with the port authorities, the said agents shall be entitled to verify their accuracy. The belligerents shall appoint an agent *ad hoc* in case of having no consular agent at any neutral seaport. The said belligerent agents shall give, in reference to the ships in question, such certificates, jointly or severally, as they may deem proper ;[3]

[3] Compare as to shipper giving bond, p. 84 (*note*).

(*b*) On production to the commander of a belligerent war-vessel of a certificate signed by the agent at the last port of call of the State to which such belligerent war-vessel belongs, attesting that there is no contraband of war among the cargo, and that no troops are being carried for the assistance of the enemy, such production shall suffice, and no visit and search shall be exercised. The commander of the war-vessel shall endorse upon the certificate the date and particulars of the said production to him of the said certificate.

And whereas differences of view and practice exist in connection with the period of grace accorded by belligerents to enemy merchant vessels in their ports or waters at the outbreak of war to return to their port of origin; the period for which a belligerent war-vessel may be detained in a neutral port or waters after the departure of an enemy vessel from the same port or waters; the carrying of captures into neutral ports; the destruction of vessels captured from neutrals; and the effectiveness and notice requisite to make blockades binding on neutral vessels;

The High Contracting Parties, desirous of applying identical rules in the above matters, agree as follows :—

5. No trading vessel in an enemy port or in enemy waters at the outbreak of war shall be liable to seizure during a period of thirty days from the date of a notification to that effect delivered to the commanding officer of the said vessel. The said vessel on leaving the said port or waters shall be provided with a safe-conduct, restricted to the ordinary route, to the port for which it is bound. The said certificate of safe-conduct[1] shall set out the dates of notice and departure, the destination of the vessel, and such other particulars as may be necessary to assure its identity.

[1] This principle was followed by France in the Franco-German War.

6. No armed vessel of either belligerent shall be permitted to leave, or shall after notice leave a neutral port, roadstead, or waters from which any vessel of war or merchant ship of the other belligerent shall have previously departed, until after twenty-four hours from such previous departure.

7. Belligerent war-vessels shall be entitled to call at neutral ports and anchor in neutral waters; but, subject to the provisions of Art. 6, on receiving notice from the neutral authorities to leave such ports or waters, they shall so leave them within twenty-four hours, unless prevented by stress of weather. The only assistance a belligerent war-vessel may receive at a neutral port or in neutral waters is materials restricted to making it seaworthy, and coal and provisions restricted to what are necessary to carry her to the nearest port of her own country or another nearer neutral port. The same rule shall apply to captured vessels. *If, however, any captured vessel shall remain within any neutral port or waters more than*

*the twenty-four hours (stress of weather excepted) above provided, it shall be released, and the capture shall be of no effect.*[1] On all expenses of detention, wharfage, etc., being reimbursed, the neutral State shall thereupon deliver the vessel to such person or persons as the owners, through their Government, shall authorise to receive her.

[1] This is a necessary consequence of the principle that neutral territory shall not be used to facilitate belligerent operations of any kind. See p. 88.

8. In respect of sinking captures—

A belligerent commander shall be entitled to sink a captured enemy ship, and all enemy cargo, and all neutral cargo on board which is absolute contraband of war. If neutral cargo, including conditional contraband, cannot be conveniently taken on board the belligerent vessel or removed to a place of safety, the belligerent commander shall be entitled to sink it with the said enemy ship and cargo; but *the neutral owners shall be indemnified for their loss at the full invoice value thereof, including freight, with an increase of ten per cent. for loss of profit, and subject to the right by the neutral owners to bring forward any claim for a higher indemnity through the Government of their country*, who in their discretion may submit it for examination by the Joint Commission provided for under Art. 12 hereof.

The belligerent commander shall be entitled to sink all absolute contraband of war found on board any neutral vessel; and if the separation of such absolute contraband from the rest of the cargo should be impracticable, and it is absolutely impossible to retain possession of the captured vessel, he shall be entitled, after removal of all persons on board and all papers and documents, and as much as can be saved of the cargo, to sink it. The said papers and documents shall be inventoried, and the inventories if possible, with a record of facts, shall be agreed and signed by the belligerent commander and neutral master—the belligerent commander to seal them up in the presence of the master and send them so sealed to the Prize Court. If the contraband on board is not absolute contraband, the belligerent right in regard to it shall be confined to the right of pre-emption as provided in the previous paragraph and a special convention relating to contraband.[2]

[2] See p. 168.

9. In respect of blockades—

(*a*) No blockade shall be deemed effective unless it is confined to a port, landing-stage, roadstead, or anchorage, or bay being a means of access to a port, landing-stage, roadstead, or anchorage. The blockading belligerent shall be entitled to

exercise blockading rights to a distance of (say) ten miles from low-water mark along the coast-line, or from a base line drawn between the headlands of a bay not more than ten miles apart, and over a distance on either side of the entrance to the blockaded port or on either side of the said headlands not exceeding ten miles.

Subject to the above, a blockade shall be deemed effective when ingress or egress from a port, landing-stage, roadstead or anchorage, or bay accessory thereto, is impossible without crossing the line of fire of a vessel or vessels stationed to prevent such ingress or egress.

No question of the *effectiveness* of a blockade can therefore be raised in behalf of any vessel captured within the distances above stated, and in no case shall ingress or egress from a port during the absence of a blockading vessel or vessels be a violation of the blockade;[1]

(*b*) No neutral vessel shall be liable to the penalties of violating a blockade which shall not have had notice of the existence thereof. Notice to a neutral Government is binding on all ships sailing from ports within its jurisdiction after expiry of seven clear days from the date of its receipt by the said neutral Government;

(*c*) Any neutral ship which may have sailed for a blockaded port before such notice shall have become binding, shall upon receiving notice from a blockading vessel, entered in her log or endorsed upon her papers, be held to have received notice, and thereafter she will be exposed to all penalties attaching to violation of a blockade;

(*d*) Constructive notice of blockade, such as probable knowledge from notoriety or otherwise, or such knowledge as might have been obtained at a port of call shall be without effect; but the blockading commander shall be entitled to verify the date of departure from the port of lading; and in case the date shall not have been duly entered in the log or papers by the proper authorities of the said port, he may send the ship for trial to the nearest Prize Court;

[1] The present practice in regard to effectiveness, justifiable perhaps in an earlier state of navigation, can now be made to conform more exactly to the Declaration of Paris, which requires that blockades shall *interdire réellement l'accès*. By the way *accès* means "ingress." The framers of the Declaration seem to have overlooked "egress." See p. 207 *et seq.*, and text of Declaration, p. 291.

(*e*) Notice of a blockade shall not be valid unless it shall state the geographical limits thereof, and they shall be in accordance with the provisions set out in § (*a*).

10. By "capture" is meant "the taking of effective possession." No capture from an enemy shall confer a lawful title on the capturing belligerent in such manner as to make the captured ship the absolute property of the capturing belligerent until after he shall have retained possession of the said ship during twenty-four consecutive hours.[1] Any call at a neutral port or in neutral waters before expiry of the said twenty-four hours shall interrupt the operation of this rule, and the twenty-four hours shall only begin to run from the time at which it shall leave such port or waters.

[1] This was the pretty general practice in the seventeenth century. The modern tendency to generalise the principle of "effective possession," and prevent finality being given t laims out of proportion to the act on which they are based, such as employing some ruse or rushing a capture into a neutral port and keeping it there till adjudication, seems to justfiy its revival.

11. An "enemy ship" means a ship flying the enemy flag, or a ship, though flying a neutral flag, whose documents show it to be registered at an enemy port. In case of suspicion as to the authenticity of its documents, the ship may be seized, and inquiries instituted to ascertain the truth at the alleged port of registration.

12. All decisions of ultimate jurisdiction delivered by the Prize Courts of each belligerent shall on the conclusion of a war be submitted to a Joint Commission composed of one representative for each belligerent state and one for each claimant neutral state, who shall report thereon and make any representations to the respective Governments concerned. Such reports and representations being of a strictly confidential character, shall only be communicated to the public on joint written consent of the Parties.[2]

[2] Compare p. 108.

# 10. SUGGESTED CONVENTION FOR ESTABLISHING A UNIFORM PRACTICE IN REGARD TO CONTRABRAND OF WAR

The H.C.P. etc. etc.

Whereas there is much difference of opinion among international jurists and States as to what may rightfully be declared by belligerents to be contraband of war, some authorities denying the existence of conditional contraband, others claiming to include among absolute contraband certain articles usually classed as conditional contraband, some States making no distinction between the penalties attaching to carriage of absolute and those attaching to carriage of conditional contraband, others enforcing the right of confiscation against the one only and merely a right of pre-emption, subject to circumstances, against the other, a distinction favoured by many international jurists belonging to nations which apply the more rigorous practice;

And whereas it is highly desirable in the interest of neutral trade that the nature of contraband and of the penalties attaching to carriage of it and of belligerent rights in regard to pre-emption should be strictly defined;

And it is also desirable to define the nature of the belligerent right where the immediate destination may be a neutral, but the ultimate destination an enemy, port:

The H.C.P. agree, as between and among them, to apply in regard to contraband the following rules:

1. Are contraband of war:—(1) arms of all kinds; (2) ammunition and explosives; (3) military equipments of all kinds, except ambulance waggons and other appliances and things, under the protection of the Geneva Convention (Ch. 4 of the revised Convention of July 6, 1906) and of the Convention for adapting the principles thereof to maritime warfare (July 29, 1899, Art. I.); (4) vessels equipped for war; (5) machinery for the manufacture of ammunition, and all other articles or things employed solely for war when conveyed by sea on account of or destined for a belligerent.

Under the heading *ammunition* are comprised articles which by being mixed or put together can be made available for war.

2. Destination for the enemy shall be conclusive when the carrying is to an enemy port. If the documents or circumstances warrant suspicion of an ultimate enemy destination

though the immediate destination be neutral, the presumption shall be against the ship.

3. Conditional contraband is abolished. Henceforth, therefore, no article can be treated as contraband simply because it might be useful to the enemy or be utilised by him, or because it is destined for the service of the enemy.

4. Nevertheless, the belligerent, at his option, has the right to purchase any cargo in whole or in part, destined to an enemy port or to a neutral port which may reasonably be regarded as a stage to an ultimate enemy destination, consisting of the following: — (*a*) foodstuffs of all kinds, (*b*) coal, (*c*) clothing materials for the use of men, (*d*) raw cotton.

The purchase shall be made at the invoice value plus freight and all charges and 10% for loss of profit.

The master of the neutral vessel may, in the alternative, with the consent of the belligerent commander, enter into a bond that he will alter the destination of his ship to a specified port which cannot be reasonably suspected of covering an enemy destination, and in this case the belligerent commander shall have no further right of purchase. Violation of this bond shall expose the neutral vessel to all the penalties of carrying contraband of war throughout the duration of the war.

5. Neutral vessels continue liable to visit and search by belligerent vessels, subject to such provisions as shall be made to attenuate its vigour in certain cases.[1]

[1] See p. 163

6. The penalties of carrying contraband of war, namely, liability to capture and condemnation in a Prize Court, shall continue as heretofore.

7. The Declaration of Paris (1856) in so far as affected by the above articles is superseded.

8. Any claim arising out of the application of this Convention, including any claim as to insufficiency of the indemnity under Art. 2 for loss of profit, shall be referred to the Joint Commission provided for under a general Neutrality Convention.[2]

[2] See p. 367.

## II. TENTATIVE FORM OF ARRANGEMENT RESPECTING MAIL SHIPS

Whereas it is agreed that neutral postal traffic should be inconvenienced as little as possible by the action of belligerents; and whereas under a Convention [1] relating to the rights and obligations of belligerents and neutrals, Art. 3 [2] provides that a special arrangement shall be made in respect of ships carrying mails; the High Contracting Parties undertake, whether acting as belligerents or as neutrals, to observe the following rules in time of war:—

[1] See suggested possible form, p. 160.

[2] See p. 163.

1. Vessels carrying mails belonging to or chartered on behalf of and commanded by officers under the direct orders of a national government, are national vessels, and are assimilated to and shall be treated as vessels of war, provided they shall fly the national flag, and carry no passengers or cargo for hire. For the purpose of the present Convention, they shall be described as "national mail ships."

2. Packets employed, although subsidised, by or on behalf of the postal departments of nations are not national vessels. For the purposes of this Convention they shall be described as "packet mail ships."

3. All packet mail ships shall fly a special mail-flag. Notice of the names and particulars of all ships entitled to fly this flag shall be given, immediately on authorisation being granted to fly it, to the *International Bureau* of the Postal Union, which shall immediately forward copies of the said notice to the Governments of all the countries of the Union.

4. In case of war between any of the High Contracting Parties, national and packet mail ships belonging to the belligerents shall continue their navigation without impediment

or molestation, until notice shall have been given by either of the said belligerents to the other that it will thereafter exercise the rights of war against such mail ships; they shall thereupon be allowed to continue their journey unmolested to their respective ports of destination.[1]

[1] The postal treaty between the United States and Great Britain of 1848 provided that in case of war between the two nations, their respective mail packets should be unmolested for six weeks after notice by either Government that the mail service was to be discontinued, in which case they should have safe conduct to return.

5. Where mails carried by a neutral packet mail ship are accompanied by a Government official or agent belonging to the State of which the said packet mail ship carries the flag, he shall have a detailed statement as to the territorial destination of the letters and despatches in his keeping.

6. Letters and despatches from a neutral country to an enemy country shall be liable to an inspection, which shall take place on the carrying vessel in the presence of the accompanying postal officer.[2] Any letter or despatch which the belligerent officer may regard as suspicious[3] he may seize on giving a receipt therefor. The receipt shall record the address, post-marks, stamps, and weight of the letter seized. It shall be in the power of the belligerent officer in the presence of the accompanying official to open any such letter; and if the contents thereof involve no further question, he shall close and seal it with an official seal which shall be provided for this purpose. In default of so sealing, the belligerent officer shall state in writing on the envelope the date and occasion of the letter having been opened.

[2] It is usual, I believe, but should be universal, that the mails never leave the hands of a responsible postal official. Otherwise it is difficult to see how "the right of transit is guaranteed throughout the entire territory of the Union," under Art. 4 of *Universal Postal Convention* of June 15, 1897, and under the definition of "Postal Territory," given in Arts. 1 and 3 of the same Convention, viz.: "The countries between which the present Convention is concluded, as well as those which may adhere to it hereafter, form, under the title of Universal Postal Union, a *single postal territory*," etc. (Art. 1). In the absence of any contrary arrangement, the direct sea conveyance between two countries by means of packets or vessels *depending upon one of them* (dependant de l'und'eux) is considered as a third service (service tiers), etc.

[3] In the American proclamation of April 28, 1898, issued in connection with the Spanish war, the President prescribed that the right of search was to be exercised with strict regard for the rights of neutrals, and the voyages of mail-steamers were "not to be interfered with except on the *clearest grounds of suspicion* of a violation of law in respect of contraband or blockade."

7. Letters or despatches to an enemy Government are prize of war, and shall be forthwith handed over, in exchange for a receipt, at the request of a belligerent commander.

8. Letters and despatches, whether on board a vessel belonging to a belligerent or to a neutral country for a neutral destination, shall in no case be liable to seizure unless the addressee be an enemy authority, in which case they shall be lawful prize.

9. Postal authorities to facilitate the operation of this Convention undertake, as far as possible, to keep all correspondence for a belligerent destination distinct from that for a neutral destination.

# 12. TENTATIVE DRAFT TREATY FOR ASSIMILATION OF PRIVATE PROPERTY AT SEA TO PRIVATE PROPERTY ON LAND IN WARFARE

(*N.B.*—The object of this draft, and of the following one, is to see how assimilation would work out. The distinction between assimilation to private property on land and assimilation to neutral private property at sea imposes itself of necessity, as soon as the subject is handled in detail; this does not seem to have occurred to those who have framed the current general suggestions on the subject. *Neither this nor the following draft must be regarded as a suggested form.*)

H.M. . . . etc. etc.

Considering that Art. LIII.[1] of the Regulations annexed to the Convention of July 29, 1899, relating to the Laws and Customs of War, provides that an army of occupation can only appropriate property belonging to the enemy State; that, as regards property belonging to private persons or companies, the army of occupation may employ for military operations railway plant, land telegraphs, telephones, and all kinds of material which can be applied to the uses of war, but that they must be restored on the conclusion of peace, and[2] indemnities paid for them; that among such private property are included in the same article, steamers and other ships not subject to maritime law, vessels of the latter kind remaining liable to capture and confiscation;

That a vessel on the High Sea is, by the law and custom of nations, assimilated, as far as practicable, to the territory of the State in which it is domiciled;

[1] This article is as follows: "An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

Railway plant, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depôts of arms and, generally, all kinds of war material, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them."

[2] The word *and* is used in Art. LIII. This includes *a fortiori*, *or*, where the *materials* in question have been used up or destroyed.

And that, under the Declaration of Paris of 1856,[1] progress was made in attenuating the rigour of maritime warfare in respect of private property at sea;

Desiring to further attenuate the rigour of maritime warfare, have appointed, etc. etc., who, etc. etc., have agreed as follows:

1. The words, "apart from the cases governed by maritime law," in the second paragraph of Art. LIII. of the said Hague Convention of 1899, shall be cancelled.

2. The following articles shall be read as forming part of the said Convention:

(*a*) When a vessel the papers of which show it to be domiciled at an enemy port, or the cargo, or any portion of the cargo thereof, shall be requisitioned by a belligerent commander, the said commander shall, in accordance with Art. LII. of the said Hague Convention of 1899,[2] deliver to the officer in command of the requisitioned vessel a receipt, which shall be as detailed as practicable. The officers and crew of the requisitioned vessel shall be landed at the nearest port, and provided with the necessary journey-money to reach their respective homes. Cargo on board an enemy vessel may be requisitioned without distinction whether it belong to enemy or neutral subjects or citizens, the rule of the Declaration of Paris, that neutral property on enemy ships is free, being hereby modified, in so far as conflicting herewith.

[1] It will be useful in this connection to recall the complete text of the Declaration of Paris, which is as follows:—

"The Plenipotentiaries who signed the Treaty of Paris of March 30, 1856, assembled in conference,

"Considering:—That maritime law in time of war has long been the subject of deplorable disputes;

"That the uncertainty of the law and of the duties in such a matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts; that it is consequently advantageous to establish a uniform doctrine on so important a point;

"That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into International relations fixed principles in this respect.

"The above-mentioned Plenipotentiaries, being duly authorised, resolved to concert among themselves as to the means of attaining this object; and having come to an agreement, have adopted the following solemn declaration:—

"1. Privateering is and remains abolished;

"2. The neutral flag covers enemy's goods, with the exception of contraband of war;

"3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;

"4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

"The Governments of the undersigned Plenipotentiaries engage to bring the present declaration to the knowledge of the States which have not taken part in the Congress of Paris, and to invite them to accede.

"Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

"The present Declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.

"Paris, *April* 16, 1856."

The chief dissentient was the United States, who, while recognising the last three principles, were unable to agree to the first on the ground that, maintaining only a small navy, they would be obliged in time of war to rely largely upon merchant ships commissioned by the Government as war-vessels, and that, therefore, the discontinuance of privateering would be entirely in favour of European Powers, whose large navies rendered them practically independent of such aid, unless immunity of private property from capture in maritime warfare were proclaimed along with the abolition of privateering.

[2] This article is as follows: "Neither requisitions in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country. These requisitions and services shall only be demanded on the authority of the commander in the locality occupied. The contributions in kind shall, as far as possible, be paid for in ready money; if not, their receipt shall be acknowledged."

(*b*) All distinction between absolute and conditional contraband is abolished. The following articles alone are contraband within the meaning of the present Convention:

[*List thereof to be agreed.*[1]]

[1] Enemy and neutral correspondence wil have to be considered in fixing the enumeration. Compare list, p. 168. See p. 170.

(*c*) Vessels on the High Sea flying a neutral flag, and in possession of papers showing that they are domiciled at a neutral port, such papers having been duly legalised by the belligerent Consular authorities, are not liable to visit and search except within notified areas of hostilities. The presence of contraband on board a neutral vessel within the areas of hostilities may expose the commander and crew thereof, and the owners of both vessel and contraband cargo, to the penalties of assisting an enemy in war, the contraband cargo to appropriation, and the neutral vessel to being taken out of its course for the purpose of such contraband being trans-shipped. For the purpose of such trans-shipment the belligerent commander may and shall use the nearest available neutral port, if an available port of his own nationality be unreasonably distant; the said belligerent commander may sink either vessel or cargo wherever he can do so without danger to neutral navigation.[2]

[2] This seems to be, as nearly as possible, the equivalent of the belligerent's rights under existing practice on land.

(*d*) Any vessel, enemy or neutral, attempting to violate a duly notified and effective blockade[3] may be captured, and with its cargo will be lawful prize; and the captain and crew of the said vessel may be treated as prisoners of war.

[3] Compare p. 165.

3. At the outbreak of war the belligerent States shall respectively appoint a member of the Hague Court; these to choose an umpire,—in case of non-agreement the President of the Swiss Confederation to appoint such umpire; the said three persons to form a Court to deal with all questions which may be brought before them in the course of and in connection with the war, their decision to have a purely advisory character.[1]

[1] See pp. 14 and 151, and Chap. XVI. This article is added as an example of the possible application of Draft No. 4.

# 13. TENTATIVE DRAFT TREATY FOR ASSIMILATION OF BELLIGERENT TO NEUTRAL PRIVATE PROPERTY AT SEA[1]

(N.B.—*See prefatory note to draft No. 12, p. 172.*)

H.M. . . . etc. etc.

Considering that the United States delegates to the Hague Conference of 1899 submitted thereat the following resolution:

"The private property of all citizens or subjects of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure on the High Seas or elsewhere by the armed vessels or the military forces of any of the said signatory Powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said Powers";

That the following *Vœu* expressed by the Conference in reference thereto was adopted:

[1] Lord Chancellor Loreburn (then Sir Robert Reid) in an interesting letter published in the *Times* of October 14, 1905, dwelt on the, he believes, practical uselessness of the present system of capture as a means of crippling the enemy in the following passage: "I will suppose Great Britain at war with one or more great Continental Powers, and let it also be supposed that the British fleet has established its naval supremacy and has even blockaded the entire coast-line of its enemies, which latter is an uncommonly strong hypothesis. In those condition the only damage we could do to our imaginary enemies would be the suppression for the time of their carrying trade. Part of their merchant navy would be captured, and the rest would be confined to port. The injury would not be deadly. They could live upon their own produce and upon the produce of their neighbours carried by rail. They could dispense with sea-borne merchandise, or, if required, could purchase it from neighbours who had imported it into their own country, and, but for blockade, they could import it themselves in neutral vessels. Such is the full measure of the mischief we could do to a Continental enemy by a triumphant exercise of the right of capture at sea supplemented by the establishment of a complete blockade. He would be to a great degree invulnerable by the weapon of capture, because he lives on a continent. Now all the Great Powers in the world, except ourselves and far distant Japan, live on continents. . . . Were we confronted in war by two strong naval Powers, a considerable time would probably elapse before all the enemy squadrons were driven from the ocean. Is our merchant navy to be laid up all that time? Nor ought we to exclude the possibility of reverses or of a conflict so evenly sustained that neither side could for an indefinite time assert a decisive naval superiority. In order justly to estimate the bearing on British interests of the existing law of maritime capture, all contingencies must be regarded, at least if they are not extravagantly improbable."

"The Conference expresses the wish that the proposals which contemplate the declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration";

That a number of resolutions have since been passed by different important political bodies and bodies representing shipping interests in Great Britain,[1] Germany,[2] and the United States of America[3] in favour of such immunity;

Assuming that the effect of such immunity is to assimilate enemy ships and their cargoes to neutral ships and their cargoes, both as regards freedom from capture and liability for violating blockades and carrying contraband;

And whereas the British and German Governments have expressed in the course of recent wars their objections to the stoppage and search of merchant ships at such a distance from the seat of war as to make stoppage and search vexatious to neutral vessels out of proportion to its utility to the belligerent;

The signatories to the present Convention, adopting the above assimilation of belligerent to neutral property on the High Seas, and having appointed, etc. etc., have agreed to respect the following principles and regulations in any war which may unfortunately hereafter break out between them:

[1] See Note on National Indemnity for captures, p. 200.

[2] The London *Tribune* of July 25, 1906, published an article by "a Hamburg correspondent" giving views held in the German shipping world on the subject. The article was as follows: "Whatever be the views of the German Government, there is no doubt that the great majority of our shippers and commercial men are anxious to enlarge the rights of neutrals, and are by no means inclined to allow their real interests to be lost sight of under the plea of State necessity. Nay, they go further. Not only do they wish to strengthen the present exemption of neutral property not contraband of war from capture, but they wish naval warfare to conform to the principles of war on land, and they would, therefore, extend the principle of exemption from the citizens of neutrals to the citizens of belligerents. In short, they would assert the principle that no ship or cargo which is not contraband of war may be seized in war by either belligerent without due payment of compensation. But it is generally held here that there is no hope of this reform of international law and custom being carried, so long as the English Admiralty and English jurists continue to regard the destruction of an enemy's commercial marine and of his trade as one of the principal means and objects of a naval war. A lively dispute has been going on in Germany as to whether the English Courts would even recognise in time of war insurances of German property and shipping that have been effected in English insurance companies. Obviously, until this question has been settled, it is in vain to hope for a recognition of the wider principle.

In the meantime, however, it may be well to refer to a work by E. Fitger, a gentleman of Bremen, entitled *Die Rückwirkung des Ostasiatischen Krieges auf das Völkerrecht.* Herr Fitger, who writes from the point of view rather of the great shipping liners than of the tramp vessels, which do a less regular trade, comes to the conclusion, first, that no neutral vessel taken by a belligerent on the ground that she is engaged in contraband trade should be confiscated or destroyed; in every case such a ship ought to be either released or taken to be adjudged by a Prize Court. Secondly, he insists that Prize Courts should be international institutions, and not tribunals appointed by the belligerent Power. Thirdly, Fitger holds that an effort should be made to restrict the definition of contraband, and especially to shorten the list of those articles which may lawfully, under certain conditions, be declared contraband; and, lastly, he wishes more security to be afforded to mail steamers.

Here it may be well to mention what has already been referred to in the *Tribune*, that, after the Declaration of Paris, both Hamburg and Bremen repeatedly affirmed the desirability of protecting private property at sea. In the last few years neither Hamburg nor Bremen has passed any resolution in regard to the immunity of private property at sea in wartime; but the Deutscher Nautischer Verein, with which both chambers of commerce are intimately linked, passed resolutions in 1871, 1890, 1900, and 1905, the most specific being those of 1905, when the secretary of the Hamburg Chamber of Commerce, Dr. Gutschow, acted as reporter for the committee. The terms of the resolution are as follows:

The Nautische Verein (Maritime Union) resolve, with one dissentient, on a petition to the Imperial German Chancellor to exercise all the influence he can bring to bear in the direction that—

(1) The international laws applying to the rights of belligerents in naval warfare be developed in a spirit of humanity, and with due regard to the circumstances of maritime intercourse; and especially that—

(*a*) The seizure and destruction of private property (excepting contraband of war) belonging to subjects of the belligerent nations be declared inadmissible;

(*b*) The right of searching merchant vessels be exercised only in the case of ships proceeding to an enemy's port;

(*c*) The term contraband of war be defined.

The real and immediate question is what is likely to be the opinion of the Government of the greatest naval Power in the world. In short, it will depend upon the attitude of Great Britain at the Hague Conference whether the widespread desire for this great reform of the laws of capture at sea (which prevails not only in Germany, but throughout the shipping and commercial circles of the entire world) shall or shall not be speedily realised and carried out by an international convention.

[3] See p. 4.

1. (*a*) The belligerent right to capture and appropriate as lawful prize merchant vessels belonging to subjects or citizens of the enemy State is abolished.

(*b*) Such vessels shall, nevertheless, be subject to capture and confiscation if they shall attempt to enter a blockaded port, after notice to them of the existence of the blockade.

(*c*) Such vessels carrying contraband of war, as hereinafter defined, shall also be liable to capture and confiscation.

2. By "notice" of a blockade is meant such notice as shall be given by the authorities at the last port called at by the vessel in question, or notice given by the commander of the blockading squadron. If the notice shall have been insufficiently precise to enable the captured merchant vessel to avoid the blockaded area, this shall be considered in attenuation by the Prize Court. The signatories hereof undertake, immediately after receipt of notice of a blockade, to bring it to the knowledge of the commanding officers of all vessels in their ports, and to endorse it, as far as practicable, on the ships' documents. Belligerent commanders, on inspection of any ship's documents, shall endorse thereon, among the usual particulars, notice of any blockade the naval authorities of his country may be exercising.[1]

[1] Co-operation between the neutral and belligerent States is obviously indispensable to avoid uncertainty as regards notice. See proposed clauses altering law of blockade, p. 165. See also p. 207 *et seq.*

3. The distinction between absolute and conditional contraband of war is hereby abolished, the following articles alone being henceforth admissible as contraband of war:

[*List thereof to be agreed.*[2]]

[2] Enemy and neutral correspondence will have to be considered in fixing the enumeration. Compare list, p. 168. See as to Mail Ships, p. 170.

4. On the outbreak of war the belligerents shall fix the limits of the area and distance from the seat of war within which they will exercise their right of search for contraband of war.[3] Outside this area or beyond this distance, production to the belligerent commander of the ship's papers with a certificate delivered by

[3] See Chap. IX. and Draft VI. This provision is not strictly within the scope of the present assimilation, but it would find its proper place in a treaty on the lines of the present draft.

the public authorities at the neutral port or ports of lading declaring that the destination of the ship is not a belligerent port, and that there are neither contraband nor belligerent troops on board, shall be an absolute bar to further stoppage.

5. The signatories to the present convention pledge themselves to make the necessary arrangements at all their seaports to enable full effect to be given to this article.[1]

[1] See observation in note 1 on previous page.

# 14. FORM OF AGREEMENT AS TO THE PROCLAMATIONS OF NEUTRALISATION

Considering that Art. 10 of the General Act of Berlin of Feb. 26, 1885, provides that:

"In order to give a new guarantee of security to trade and industry, and to encourage by the maintenance of peace the development of civilisation in the countries mentioned in Article I.,[1] and placed under the free-trade system, the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to respect the neutrality of the territories or portions of territories, belonging to the said countries, comprising therein the territorial waters, so long as the Powers which exercise or shall exercise the rights of Sovereignty or Protectorate over those territories, *using their option of proclaiming themselves neutral*, shall fulfil the duties which neutrality requires."

[1] This Article extends the application of the free-trade declaration to all the territories forming the basin of the Congo and its tributaries. It adds a zone eastwards of the Congo Basin to the Indian Ocean, and concludes as follows: "It is agreed that, in extending the principle of free trade to this eastern zone, the Powers represented at the Conference only enter into an undertaking for themselves, and that this principle does not apply to territory belonging at present to any independent and sovereign State without its consent. The Powers undertake to employ their good offices with the Governments established on the African shore of the Indian Ocean with a view to obtaining their consent thereto, and, in any case, to assure the most favourable conditions of transit for all nations."

But that no provision has been made for the mode in which notice of such a proclamation of neutralisation shall be given;[2]

[2] The provision made for notice in case of occupation is as follows: "Any Power which shall henceforth take possession of any territory on the shores of the African Continent, situate outside its present possessions, or which, until now, having none, shall come to acquire any such possessions, and any Power which shall assume a protectorate, shall accompany the document relating thereto by a notification addressed to the other Powers, signatories to the present Act, in order to enable them, if need be, to make good any claims" (Art. 34).

And whereas the said General Act provides that difficulties arising in connection with the territories dealt with under it shall, before any appeal to arms, be submitted to mediation or arbitration;[3]

[3] Art. 12.

And considering that Art. 11 provides that—

"In case a Power exercising rights of Sovereignty or Protectorate in the countries mentioned in Article I., and placed under the free-trade system, should be involved in a war, then the High Signatory Parties to the present Act, and those who shall hereafter adopt it, bind themselves to lend their good offices in order that the territories belonging to this Power and comprised in the conventional free-trade zone shall, by the common consent of this Power and of the other belligerent or belligerents, be placed during the war under the rule of neutrality, and considered as belonging to a non-belligerent State, the belligerents thenceforth abstaining from extending hostilities to the territories thus neutralised, and from using them as a basis for war-like operations."

And whereas there is no reason why, subject to the same principles and conditions, such neutralisation should not be made applicable to other non-European (European ?) regions;

It is hereby agreed, etc., etc., as follows:—

1. Upon notice being given to the *International Bureau*[1] at The Hague that any High Contracting Party has placed any territory under the *régime* of strict permanent neutrality, the said Bureau shall notify all the other High Contracting Parties accordingly. If within three months after receipt of such notification, no objection should be raised by any H.C.P., such permanent neutrality shall be considered as proclaimed.

[1] See Art. 22 of "The Hague Peace Convention."

2. The conditions upon which permanent neutrality shall be enjoyed are as follows:

(*a*) That on the neutral territory there shall, at no time, be raised any fortifications, and that there shall be kept up in connection with it no armed ships or forces beyond such as may be necessary for the preservation of public order;

(*b*) That the rules of neutrality as set out in draft No. 9[2] shall be strictly observed;

[2] See p. 162.

(*c*) That all international difficulties, without any exception whatsoever, shall be deemed *ipso facto* within the jurisdiction of The Hague Court, the Umpire, in case of disagreement as to his selection, to be appointed by the President of the Swiss Confederation, and in case Switzerland should be a party, or the President should refuse to act, by the King of Norway.

3. The High Contracting Parties solemnly undertake to respect any neutralisation thus proclaimed and observed. Any breach thereof shall be submitted to The Hague Court in accordance with the provisions of § (*c*) of Art. 2 hereof.

# 15. DRAFT PROTOCOL FOR THE INSTITUTION OF AN INTERNATIONAL COMMISSION ON MILITARY AND NAVAL ARMAMENTS AND BUDGETS

(in case any great Power should not be prepared to sign a treaty on the subject)

The Governments of Great Britain, France, Germany, Austria, Italy, Russia, and the United States not having been able to agree on a satisfactory basis of arrangement for giving effect to the following resolution and *vœu* adopted at The Hague Conference of 1899:

[*Resolution.*]

"The Conference is of opinion that the restriction of military budgets, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind";

[*Vœu.*]

"That Governments, taking into account the proposals made at the Conference, should examine the possibility of an understanding concerning the limitation of military and naval armaments, and of war budgets";

but being desirous of giving all possible effect at a future Conference to the great and useful object contemplated by the above resolution and *vœu*, agree as follows:

(1) The question of restricting military budgets and military and naval armaments shall be submitted to examination by a Commission of experts to be composed of four representatives for each of the above Governments—the said representatives to be experts respectively in military, naval, and financial matters, and in International Law;

(2) A full report of the discussions of the Commission shall be printed at the expense of the Powers concerned; but any Government represented shall be entitled to have any statements made in its behalf excluded from the report.

(3) The British Government is entrusted with the convening of the Commission, which shall meet in London not later than one year from the date of this protocol.

# 16. DRAFT PROTOCOL FOR THE INSTITUTION OF A COMMISSION TO CONSIDER ALL QUESTIONS RAISED BUT LEFT IN ABEYANCE BY THE HAGUE CONFERENCE OF 1907

The Governments of the Powers represented at the present Conference having found it impossible to deal with many of the questions which have been raised thereat, but wishing to give every possible facility for their discussion at a future Conference, and to take advantage of the interval for the purpose of formulating and co-ordinating the different suggestions which have been made, agree to refer all such matters for consideration to an international Commission, which shall be formed and carry on its examination of the questions submitted to it in accordance with the following provisions:

1. The Commission shall be composed of one member for each sovereign Power.

2. At each session the Commission shall elect a Chairman, whose functions as such expire with the closing thereof.

3. It shall be competent for the Commission to submit special points for advice thereupon to the *Institute of International Law*, *the International Law Association*, and any other scientific or expert bodies.

4. Reports and recommendations shall be signed by those who approve them, but shall have no binding force on the Governments represented by the delegates thus signing.

5. The calling of meetings and all matters relating to their accommodation shall be entrusted to the Dutch Government. The expenditure occasioned shall be reimbursed to the Dutch Government by the different States concerned in the proportions fixed for the International Bureau of the Universal Postal Union.

## 17. POSSIBLE *VŒU* AS TO RUPTURES IN DIPLOMATIC RELATIONS[1]

Whereas misunderstandings have in practice arisen through States withdrawing their Embassy or Legation at a critical time, and such a withdrawal not only makes it difficult, if circumstances should modify the situation, to resume negotiations, but serves to embitter the relations between the nations in question,

This Conference expresses the hope that Governments will avoid recourse to this method of showing their displeasure, and introduce the practice of keeping their diplomatic missions at their post so long as peace between their respective countries has not been actually broken.

[1] See p. 58.

# 2A. CONVENTION ON ALTERATIONS TO BE MADE IN THE HAGUE PEACE CONVENTION OF 1899, INCLUDING REVISION OF THE MEDIATION CLAUSES

The High Contracting Parties, etc. etc.

GOOD OFFICES AND MEDIATION.[1]

(1) Whereas experience has shown that the articles relating to good offices and mediation in the Peace Convention of 1899 are drawn too vaguely to effect the purpose set out in Article I. thereof, and whereas it is the desire of the High Contracting Parties to encourage as much as possible recourse to this pacific method, the character of which is essentially friendly, and which the High Contracting Parties reiterate their firm intention, as among them, never, in any case, to regard in any other light,

[1] See p. 191.

Decide—

That Articles II. to VIII. of the said Peace Convention are hereby cancelled, and for them substituted the following articles :[2]—

2. In case of serious disagreement between any of the Signatory Powers which may have caused a rupture of diplomatic relations, the said Signatory Powers undertake forthwith to communicate a statement of their respective grievances to the International Bureau of The Hague Court. The International Bureau shall upon communication of such statement by either or both Parties, immediately have it or them printed, and shall communicate with the least possible delay copies thereof to the diplomatic representatives at The Hague of the other Signatory Powers. The Bureau shall also call a meeting of the said diplomatic representatives, to be held at any time not exceeding 10 days after communication of the said statement or statements, for the purpose of receiving any further communication in connection therewith, and ascertaining if any Power or Powers is or are prepared to offer its or their good offices for the purpose of mediation.[3]

[2] The text in French would be as follows :—

2. En cas de grave désaccord entre l'une ou l'autre des Puissances signataires, suivi de la rupture des relations diplomatiques, les dites Puissances signataires s'engagent à communiquer un exposé de leurs griefs respectifs au Bureau International de la Cour de la Haye. Le Bureau International, dés réception de cet exposé par les deux Parties ou l'une d'elles, le fera imprimer et le communiquera dans le plus bref délai aux représentants diplomatiques à la Haye des autres Puissances signataires. Le Bureau convoquera en même temps lesdits représentants diplomatiques à une réunion qui devra avoir lieu 10 jours au plus tard après la communication dudit ou desdits exposés, en vue de recevoir toutes communications ultérieures se rapportant au litige en question et de reconnaitre si une ou plusieurs Puissances est ou sont disposées à offrir ses ou leurs bons offices en vue d'une médiation.

[3] This Art. would permit of effect being given to Art. VIII. of the Treaty of Paris 1856, which provided that an "opportunity" should be given to the Powers to mediate. The wording of The Hague Convention provides no "opportunity." See Text of Art. VIII. p. 191.

3. Any State shall have the right at any moment to lay a statement of any difficulty, which it may have been unable to settle by diplomatic negotiation, before the International Bureau, which, thereupon, shall print the said statement and submit it to the diplomatic representatives at The Hague of the other Signatory Powers, and call a meeting of the said representatives, to be held at any time not exceeding 21 days thereafter, for the purpose of receiving any communication in connection therewith, and ascertaining if any Power or Powers is or are prepared to offer its or their good offices for the purpose of mediation.

3. Tout État aura le droit, à n'importe quel moment, de soumettre un exposé de toute difficulté qu'il aura été impossible de solutionner par la voie diplomatique, au Bureau International, lequel au reçu de ce document, le fera imprimer et le soumettra aux représentants diplomatiques à la Haye des autres Puissances signataires. Le Bureau convoquera les dits représentants à une réunion qui devra avoir lieu au plus tard 21 jours après ladite communication, en vue de recevoir toutes communications ultérieures se rapportant au même objet et de reconnaitre si une ou plusieurs Puissances est ou sont disposées à offrir ses ou leurs bons offices en vue d'une médiation.

4. If any State laying such a statement before the Bureau shall not be a Signatory Power, or have no diplomatic representative at The Hague, it shall be entitled to request the diplomatic representative of any Signatory Power to represent it *ad hoc*; and if any such Signatory Power should decline so to act, the International Bureau shall *ex officio* appoint any person to act for the purpose of communications with the State in question.

4. Dans le cas où un État qui soumettrait un exposé de cette nature au Bureau ne serait pas une des Puissances signataires ou n'aurait pas de représentant diplomatique à la Haye, cet État serait autorisé à prier le représentant diplomatique de toute Puissance signataire de la représenter ad hoc et dans le cas où la Puissance ainsi requise déclinerait pareille requéte, le Bureau International devra nommer d'office une personne de son choix qui sera chargée des communications avec l'État en question.

5. The tendering of good offices can never be regarded by one or the other of the parties in conflict as an unfriendly act.[1]

5. L'offre de bons offices ne peut jamais être considérée par l'une ou l'autre des Parties en litige comme un acte peu amical.

6. The part of mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

6. Le rôle du médiateur consiste à concilier les prétentions opposées et à apaiser les ressentiments qui peuvent s'être produits entre les États en conflit.

Les fonctions du médiateur cessent du moment où il est constaté, soit par l'une des Parties en litige, soit par le médiateur lui-même, que les moyens de conciliation proposés par lui ne sont pas acceptés.

7. Good offices and mediation, either at the request of the parties at variance or on the initiative of Powers strangers to the dispute, have exclusively the charter of advice, and never have binding force.

7. Les bons offices et la médiation, soit sur le recours des Parties en conflit, soit sur l'initiative des Puissances étrangères au conflit, ont exclusivement le caractère de Conseil et n'ont jamais force obligatoire.

8. The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilisation or other measures of preparation for war.

If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

8. L'acceptation de la médiation ne peut avotr pour effet, sauf Convention contraire, d'interrompre, de retarder, ou d'entraver la mobilisation et autres mesures préparatoires à la guerre.

Si elle intervient après l'ouverture des hostilités, elle n'interrompt pas, sauf Convention contraire, les opérations militaires en cours.

## COMMISSIONS OF INQUIRY.

(2) And whereas experience has shown the usefulness for the preservation of peace of the articles relating to Commissions of Inquiry, and also that the scope of such commissions may safely be extended:

And agreeing that any inquiry into the facts of a difficulty between the High Contracting Powers shall never be considered to involve their national honour;

[1] Arts. 5, 6, 7, and 8 are a reproduction of the existing Arts. 4, 5, 6, and 7.

And whereas, if a vital interest is involved, either High Contracting Power can always refuse to submit the difficulty as a whole to a commission of inquiry, or may, in the protocol of submission, make such reservations as it thinks necessary in reference thereto;

And whereas it is desirable that the terminology of the Peace Convention be homogeneous, and that the use of different terms for similar objects in the titles relating to Commissions of Inquiry and Arbitration is misleading;

Decide—

That in Article IX. the words "involving neither honour nor vital interests" and "as far as circumstances will allow" be cancelled as useless and therefore possibly misleading; that in Article X. § 1 the term "protocole de soumission" be substituted for the term "convention spéciale" and that in the following paragraphs of the said article the same term be substituted for the term "convention d'Enquete" and that Article XXXI.[1] of the Convention be made applicable to the contents of such *protocole*.

[1] See existing text of this article, p. 221. See suggested text, p. 188.

## INTERNATIONAL ARBITRATION.

(3) And whereas it is desirable to centralise all matters as far as possible in the International Bureau, and Article XXII. relating thereto leaves a number of matters untouched, and whereas the Judges in the *Pious Fund* Case made recommendations in connection therewith which appear to the High Contracting Powers well justified, the High Contracting Powers have decided to add the following paragraphs thereto:[2]—

Powers in litigation which have agreed to submit any dispute between them to the permanent Court of Arbitration, shall immediately upon signature of the protocol of submission, communicate it to the International Bureau, and request it to take the necessary measures for the installation of the arbitral tribunal;

The same Powers shall, after appointment of their arbitrators, communicate their names to the International Bureau without delay;

The International Bureau, on its part and without delay, shall communicate to the arbitrators so appointed the signed protocol of submission, and the names of the members of the arbitral tribunal already appointed.

[2] The text in French would be as follows:—

Les Puissances en litige qui ont convenu de soumettre un litige entre elles à la Cour Permanente d'Arbitrage devront immédiatement après la signature du protocole de soumission, en faire communication au Bureau International et le prier de prendre les mesures nécessaires pour l'installation du Tribunal d'arbitrage.

Les Puissances en litige devront, après avoir nommé leurs arbitres, en communiquer les noms sans retard au Bureau International;

Le Bureau International, de son côté et sans retard, devra communiquer aux arbitres ainsi nommés, le protocole de soumission signé et les noms des membres du Tribunal d'arbitrage déja nommés.

(4) And whereas Article XXXI. requires amplification and the nature of the term "special Act (*compromis*)" is not clear, and circumstances have shown that an instrument is meant which is familiar to practical lawyers and the equivalent of which is *protocole de soumission*, and, whereas experience in the four cases which have been tried by the Hague Court has shown that in other respects the said article requires alteration,

Decidé—

That the present wording of Article XXXI. be cancelled, and for it the following wording substituted : [1]—

The High Contracting Powers who have recourse to arbitration, sign a protocol of submission in which the subject of the difference, the extent of the Arbitrators' powers, and any other matters of detail, such as the time and place of sittings, the mode of election of the President of the Tribunal, the language to be used, and any special points of procedure (subject or not to the provisions of Articles LV. and LVI.), shall be clearly determined.

[1] The text in French would be as follows :—

Les Hautes Puissances contractantes qui ont recours à l'arbitrage, signent un protocole de soumission dans lequel la cause du différend, l'étendu des pouvoirs des arbitres, et tous autres détails, tels que la date et le lieu des séances, le mode d'élection du Président du Tribunal, la langue dont on devra se servir, et tous points spéciaux de procédure (sujets ou non aux provisions des Art. LV. et LVI.), seront clairement déterminés.

(5) And whereas it is desirable that there should be only one responsible Agent for each Party, though other Agents and Counsel may be employed in the case by the High Contracting Powers concerned, and take part therein as such ; and,

Whereas it is in the interests of judicial courtesy that the names of all such Agents and Counsel should be communicated beforehand to the Court ; and

Whereas it might tend to shake public confidence in the impartiality of the Court, if the same persons acted as Judges in one case and Counsel in another,

Decide—

That Article XXXVII. be modified as follows : [2]—

Art. XXXVII. The parties shall appoint a special Agent to attend the Tribunal, for the purpose of serving as intermediary between them and the Tribunal.

They are further authorised to retain, for the defence of their rights and interests before the Tribunal, Counsel or Advocates, who shall not be members of the permanent Court, and whose names and qualifications shall be communicated beforehand to the Court.

[2] The text in French would be as follows :—

Les Parties nommeront auprès du Tribunal chacune un Agent avec la mission de servir d'intermédiaire entre elles et le Tribunal.

Elles sont en outre autorisées à charger de la défense de leurs droits et intérets devant le tribunal, des Conseils ou avocats qui ne seront pas membres de la Cour permanente et dont les noms et les qualités seront préalablement signifiés au Tribunal.

(6) And whereas Article XXXVIII. needs completion to meet requirements dictated by experience

Decide—

That it shall be so completed and read as follows : [1]—

Art. XXXVIII. The Tribunal decides on the choice of languages to be used by itself, and to be authorised for use before it, unless otherwise provided in the protocol of submission.

[1] The text in French would be as follows :—

Le Tribunal décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui à moins que d'autres dispositions à ce sujet n'aient été prises dans le protocole de soumission.

(7) And whereas Article XXXIX. does not provide for the hearing of witnesses, and experience in the hearing of the *North Sea Incident* Inquiry showed the need of provisions on this subject, and whereas the provision of § 2 of Article XLVII. indicates an apprehension which it is highly desirable to provide against, and in the *North Sea Incident* Inquiry this was done by permitting commissioners to put questions anonymously through the President, and whereas the object in view would best be achieved by making the President the sole mouthpiece of the Court,

Decide—

To add the following as third paragraph in the said Article XXXIX : [2]—

[2] The text in French would be as follows :—

Art. XXXIX. To the preparatory proceedings belongs also the hearing of witnesses (if any). This hearing shall take the form of examination by the representatives of the Party producing the witness and cross-examination by the representatives of the opposing party. The Judges shall intervene as little as possible in such hearing of witnesses. All questions by Judges shall be put by the President alone without indication of the Judge at whose instance it is put.

Appartient également à l'instruction l'audition des témoins, s'il y en a. Cette audition sera conduite sous forme d'interrogatoire par la Partie qui aura produit le témoin, et contre-interrogatoire par la partie adverse. Les juges interviendront dans les auditions de temoins le moins possible. Toutes questions emanant des juges seront posées par le Président seul sans indication des juges qui les auraient provoquées.

No witness shall be heard more than once on the same facts, except by consent of the Tribunal or in order to be confronted with another witness whose evidence contradicts his.

Aucun témoin ne sera entendu plus d'une fois sur les mêmes faits, sauf du consentement du Tribunal ou en vue de le confronter avec un autre témoin dont le témoignage serait en contradiction avec le sien.

Witnesses shall make their deposition without interruption (*d'un seul trait*) and without being allowed to read any written draft. Nevertheless, they may be authorised by the President to refer to memoranda or documents, if the nature of the facts testified to should render it necessary.

Les témoins feront leur déposition d'un seul trait ; il ne leur est pas permis de lire une déposition. Toutefois ils peuvent etre autorisés par le Président à se référer à des notes ou documents, si la nature des faits relatifs a leur déposition rendait cette consultation nécessaire.

(8) And whereas inconvenience has been experienced in the hearing of the cases, which have been tried by The Hague Court, from documents being referred to in the course of the arguments which had not beforehand been communicated to counsel,

Decide—

That Article XL. shall read as follows : [1]—

Art. XL. Every document produced by either party must be communicated to the other party before any use thereof shall be made in Court.

[1] The text in French would be as follows :—

Toute pièce produite par l'une des Parties doit etre communiquée à l'autre Partie avant tout usage devant le Tribunal.

(9) And whereas the grounds set out in the addition herein contained to Art. XXXIX. apply with the same force in the case of Article XLVII.

Decide—

That this article shall be amended and read as follows : [2]—

Art. XLVII. The members of the Tribunal have the right to put questions to the agents and counsel of the parties, and to demand explanations from them on doubtful points. To prevent the questions put or the remarks made by members of the Tribunal during the hearing being regarded as an expression of opinion by the Tribunal in general, or by its members in particular, all questions shall be put by the President alone without indication of the Judge on whose account it is put.

[2] The text in French would be as follows :—

Les membres du Tribunal ont le droit de poser des questions aux agents et aux Conseils des Parties et de leur demander des éclaircissements sur les points douteux. Pour éviter que les questions posées et les observations faites par les membres du Tribunal au cours des débats puissent etre regardées comme l'expression des opinions du Tribunal en général ou de ses membres en particulier, toutes questions seront posées par le Président seul sans indication des juges qui les auraient provoquées.

## ASSIMILATION OF PROCEDURE IN COMMISSIONS OF INQUIRY AND ARBITRATION.

(10) And whereas there is no reason why the Procedure of The Hague Court should differ from that of Commissions of Inquiry, provision shall be made in the Title relating to the latter effecting this assimilation.

# ADDENDA

## XI[A]

# REVISION OF THE MEDIATION CLAUSES OF THE PEACE CONVENTION

MEDIATION is a deliberate effort made by a neutral and friendly State to restore or to preserve peace between two States at war or on the eve of war with each other. The term is sometimes used as a synonym for intervention, but mediation differs from it in being purely a friendly and gratuitous proceeding. A comparatively recent instance of the utility of mediation was that of Pope Leo XIII. in the dispute which arose between Germany and Spain in 1885 relative to the hoisting of the German flag on one of the Caroline Islands. Germany had consented to arbitration, but owing to the refusal of Spain to arbitrate on a question affecting her territorial integrity, Germany proposed the mediation of the Pope. Spain accepted, and the Pope drew up proposals which were accepted by the two States and became the basis of a protocol of arrangement between the Parties, which was signed at Rome on December 17, 1885. This incident showed not only the utility of mediation, but the advantage of adding to the variety of the resources and methods of diplomacy generally.

Provision has been made by different treaties and conventions for mediation as a preliminary measure for averting war. Thus under the Treaty of Paris of March 30, 1856 (Article VIII.) it was provided that

"if any dissension shall arise between the Sublime Porte and one or more of the other Signatory Powers threatening the maintenance of their good relations, the Sublime Porte and each of these Powers, before resorting to force, shall give an opportunity to the other Contracting Parties to mediate between them in order to prevent such extreme measures."

In the Convention of Berlin of February 26, 1885 (Article XII.) it was similarly provided that

"in the case of any serious dissension having arisen on the subject of or within the territories mentioned in Article II. and placed under the régime of

commercial liberty, between any Signatory Powers to the present Act or the Signatory Powers which may afterwards become Parties thereto, these Powers bind themselves before taking up arms to have recourse to the mediation or one or more of the friendly Powers."

A case also exists in which Contracting States agreed to place themselves under a system of permanent mediation, viz., in the Treaty of Yeddo between the United States and Japan of July 29, 1858, Article II. of which provided that

"the President of the United States, at the request of the Japanese Government, will act as a friendly mediator in such matters of difference as may arise between the Government of Japan and any European Power." [1]

[1] In the case of the Chili-Argentine Treaty of May 28, 1902, the High Contracting Parties submitted all conflicts which might arise between them to the arbitration of the reigning British Sovereign.

Good offices are a tender of mediation. On acceptance by both Parties they become mediation. They may, nevertheless, without reaching official acceptance, have a, so to speak, semi-official effect, as in the Venezuela-Guiana boundary question. The United States suggestion of mediation to the British Government "to promote an amicable settlement of the respective claims of Great Britain and Venezuela" [2] was declined, and yet the "good offices" of the United States resulted in a treaty [3] between Great Britain and Venezuela to submit the question to arbitration.

[2] Mr. Phelps to Lord Salisbury, February 8, 1887.

[3] Washington, February 2, 1897.

At The Hague Peace Conference (1899) an attempt was made to regulate Mediation and Good Offices as a method of preserving international peace. The articles on the subject are as follows:

### Title II.—On Good Offices and Mediation.

Art. II.—In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Art. III.—Independently of this recourse, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

Art. IV.—The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Art. V.—The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Art. VI.—Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice, and never have binding force.

Art. VII.—The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilisation or other measures of preparation for war.

If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

Art. VIII.—The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they entrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

These articles are too vague to be of much use in an emergency; it is obvious that clear and precise rules of conduct alone can serve for guidance when danger of war is imminent, and that, as provided by Article VIII. of the Treaty of Paris, 1856,[1] an opportunity must be *given*, and not be left to fate alone to provide.

[1] See p. 191.

The framers of Article II. of The Hague Convention seem to have felt this, but they timidly left their meaning doubtful. The article states that the Signatory Powers agree to *have recourse* to the good offices or mediation of one or more friendly Powers. Either this *recourse* means that each Contracting Power agrees to request an independent Power to make overtures for the purpose of mediation to the Power with which it is in conflict, or the article is merely a vague enunciation of moral propriety. Let us assume, however, that it has the precise meaning I have just indicated, then Article II. should read: "In

case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree, as far as circumstances will allow, to request one or more friendly Powers to tender its or their good offices with the object of bringing about a peaceful settlement."

Article III. recommends that one or more Powers, strangers to the dispute, should on their own initiative and, as far as circumstances will allow, offer their good offices or mediation, and it adds that this offer may be made during the course of hostilities; and that, if it be so offered, neither party in conflict is entitled to regard it as an unfriendly act. This is the converse case to that set out in the previous article, and the same remarks as to absence of all "opportunity" of offering the mediation apply to it.

Article VII. states that the acceptance of mediation, unless there be agreement to the contrary, has neither the effect of interrupting nor delaying the preparations for war, nor of interrupting military operations after the commencement of war. It should come next.

Articles IV., V., and VI. tell us that mediation is the reconciling of opposing claims and the "appeasing of the feeling of resentment" which may have arisen between the States at variance; that the functions of the mediator are at an end when the mediation has broken down; and that mediation in itself has no binding force. They seem to explain the obvious.

Lastly, Article VIII. recommends, when circumstances allow, a special form of mediation in which the parties to the dispute each appoint a Power to endeavour to settle it. This suggestion might be made the basis of some practical undertaking by the

Powers to enable the parties to the dispute to take advantage of mediation without loss of prestige or any possible appearance of weakness in the presence of danger. The chief difficulty in the way of applying any system of mediation is just that when negotiations have reached a critical point and national feelings are roused, the Powers in question necessarily avoid any act which might be taken as a sign of weakness, and, while war is raging, the only party which is likely to propose mediation is the losing one. Thus it is not likely that either Article II. or Article III. would ever serve the cause of peace effectively. In the case of the Russo-Japanese war an offer of mediation might have been made on the withdrawal from St. Petersburg of the Japanese Legation; but there was manifestly no likelihood of its interrupting preparations for war, which both parties had been actively carrying on for years. In the course of the hostilities a suggestion to offer mediation was made to Lord Lansdowne by the Committee of the International Arbitration and Peace Association in London. The Committee suggested that "the time had come when His Majesty's Ministers might, in concert with other Powers, appeal to the Governments of Russia and Japan to suspend the course of the war if only for a temporary cessation of hostilities, so that measures could be taken towards arriving at some definite settlement of the territorial and political contentions of the two Powers with due regard to the interests of other nations." Lord Lansdowne replied that neither of the belligerents having expressed any desire for mediation, His Majesty's Government did not consider that they could with advantage take such an action as that suggested by the Committee. In the opinion, therefore, of Lord Lansdowne the circumstances were such as to forbid any tender of good offices to either Power by Great Britain. Possibly, of course, the circumstances may have been that either one or both parties to the war had already been unsuccessfully sounded with a view to mediation. Till the final naval battle was fought, however, the ultimate fate of the war was still undecided, and President Roosevelt immediately after that battle offered his good offices to the victorious Japanese, who could then accept them without loss of prestige, and mediation resulted which brought the war to an end.

Such mediation as this is outside the rules laid down by The Hague Convention, the object of which was to find some method by which difficulties could be solved before hostilities began, or, in the course of hostilities, without waiting till after they had been practically solved by war.

Obviously the circumstance in which mediation is most likely to be effective is where a proposal of arbitration has proved abortive.[1] In the unratified Anglo-American Arbitration Treaty of 1897, mediation was included as a subsidiary measure where arbitration had failed, and now, owing to the existence of a permanent and official peace organisation, it seems possible to employ mediation in connection with that organisation in conditions which would largely remove the difficulties of its application.

[1] Yet the offer of mediation of the United States Government in the *Venezuela Indemnities* difficulty was made during the course of hostilities, and resulted in arbitration. The conditions, however, were quite exceptional.

Article VIII. points the way in which this can be done. Its proposals, however, to some extent beg the question; for if the parties agree to appoint, each, a Power to endeavour to settle the difficulty, they are not likely to have reached the fever point at which the gaining of time against each other is of greater importance than any vague possibility of settlement.

The only way, in fact, in which mediation can be made an organised instrument for the preservation of peace, is to place it, like arbitration, under the protection of European public opinion — I mean by making the refusal of a just proposal of mediation a public proceeding; this might at any rate prevent the commission of an act of supreme and manifest injustice. For such a purpose the International Bureau at The Hague should be the medium of publicity, and the proposal of mediation should cease to be dependent on its being demanded by either Power. These objects might be brought out by the adoption of articles on the following lines:[1]

[1] See proposals for a revised text of Hague Peace Convention generally, p. 185.

1. In case of serious disagreement between any of the Signatory Powers which may have caused a rupture of diplomatic relations, the Signatory Powers undertake forthwith to communicate a statement of their respective grievances to the International Bureau of The Hague Court. The International Bureau shall, upon communication of such statement by either or both Parties, immediately have it or these printed, and shall communicate with the least possible delay copies thereof to the diplomatic representative at The Hague

of the other Signatory Powers. The Bureau shall also call a meeting of the said diplomatic representatives to be held at any time not exceeding ten days after communication of the said statement or statements, for the purpose of receiving any further communication in connection therewith, and ascertaining if any Power or Powers is prepared to offer its or their Good Offices for the purpose of mediation.

2. Any State shall have the right at any moment to lay a statement of any difficulty, which it may have been unable to settle by diplomatic negotiation, before the International Bureau, which, thereupon, shall print the said statement and submit it to the diplomatic representatives at The Hague, and call a meeting of the said representatives to be held at any time, not exceeding twenty-one days thereafter, for the purpose of receiving any communication in connection therewith, and ascertaining if any Power or Powers is prepared to offer its or their Good Offices for the purpose of mediation.

3. If any State laying such a statement before the Bureau shall not be a Signatory Power or have no diplomatic representative at The Hague, it shall be entitled to request the diplomatic representative of any Signatory Power to represent it *ad hoc*; and if any such Signatory Power should decline so to act, the International Bureau may *ex officio* appoint any person to act as representative for the purpose of communications with the State in question.

## NOTE TO CHAPTER V. ON CONFERENCE ON STATUS OF HOSPITAL SHIPS

The origin of the Conference as to the Status of Hospital Ships was described at its opening by Baron Melvil de Lynden, Dutch Minister of Foreign Affairs, in the following terms:

> In order to facilitate the efforts of those who devote themselves to the humanitarian cause of help in time of war, and in order to alleviate their task as much as possible, the Government of the French Republic took the initiative, with a view to the exemption, by an International understanding, of hospital ships from all dues and taxes usually levied in ports, of calling a conference for this purpose. The Hague Cabinet gladly joined in this generous proposal, and declared itself ready to invite the Conference to meet in this country. In response to our invitation, which was issued in agreement with the Government of the French Republic, nearly all Governments have sent representatives.

Great Britain was one of the exceptions. Sir Henry Howard, British Minister at The Hague, explained that the considerations which had prevented His Majesty's Government from accepting the invitation of the Netherlands Government and taking part in the Conference, were that dues upon ships using the ports of the United Kingdom are levied by the various independent authorities in whom the ports are vested, the only exceptions being the ports of Holyhead and Ramsgate, where the Board of Trade are the Harbour Authority. Legislation would therefore be necessary before effect could be given in the United Kingdom to any convention on the proposed lines. H.M. Government could not, moreover, bind themselves to adopt any conclusions arrived at by the Conference until they had had an opportunity of fully considering the effect of such conclusions upon the private interests concerned, and of consulting representatives of the Harbour Authorities of the United Kingdom, as also those of Colonial and Indian ports, to which the above considerations would, as far as they were aware, seem to be equally applicable. H.M. Government were, however, disposed to consider the proposal favourably.

The Swedish Government also abstained, but on constitutional grounds of temporary effect.

The Portuguese Government, though it sent a representative, entered an express reservation as to the maintenance of the right of visit and search generally, that is to say, not restricted to search for contraband of war.

The Roumanian delegate made the following declaration:—"My Government has authorised me to sign the Convention that we have just discussed, under reserve, nevertheless, of the principle of reciprocity of piloting charges."

The German delegation made the following declaration:—"The Imperial Government reserves the right not to apply this Convention to those States in whose ports dues and taxes are imposed on German Hospital Ships for the benefit of an authority other than the State."

Mr. von Schlözer, German Minister at The Hague, made also the following complementary declaration :—"The provision in Art. I. of the new draft Convention limiting the exemption from shipping dues and taxes to those which are levied for the benefit of the State, does not correspond to the principle of reciprocity. According to this provision, the Contracting Powers where port dues belong to the State would be in a less favourable condition than those whose ports are vested in municipal or private authorities. Further, any State, if obliged for some reason or another to introduce new municipal shipping dues, could render the object of the Convention illusory."

Prof. de Martens pointed out an omission from The Hague Convention of 1899 for the adaptation to maritime war of the principles of the Geneva Convention to which current events had attracted special attention. It was that Art. V. of that Convention, as had already been pointed out by the Minister of France, did not specify any distinctive sign for Hospital Ships during the night. The Russian Government, considering that it was indispensable to have some distinctive night signs for the Russian Hospital Ships, had adopted a certain combination of lights which had been notified to all Governments, including that of Japan. No Government had raised any objection to a course which was entirely in accordance with the spirit of The Hague Convention.

In the course of this Conference, Mr. von Schlözer, German Minister at The Hague, also called attention to what seemed to him an omission from the Convention of 1899 relating to the adaptation to Maritime War of the Geneva Convention. Under Article VII. of this Convention "the religious, medical, and nursing staff of any captured Hospital Ship is inviolable, and cannot be taken as prisoners of war." He asked why military doctors in the active service of a belligerent should not also be inviolable. He simply put the question without suggesting any discussion on it. He thought the principle ought to be of general application.[1]

[1] Compare Article IX. of the revised Geneva Convention, p. 266.

## NOTE TO CHAPTER VIII. ON PROPOSAL OF "NATIONAL INDEMNITY" FOR CAPTURES IN TIME OF WAR

At the Buffalo Conference of the International Law Association in 1899, the present writer presented a memoir on the question of the "proposed immunity of private property at sea from capture by the enemy," in which, after examining it from all sides, he made the following reflections and suggestions:

"The assimilation of private property at sea, we have seen, would mean that the State to which the captured vessels belonged should indemnify the ship and cargo owners for their loss. Thus the humanising of war as regards private property is not only a matter of international law; it is also, and indeed mainly, a question of domestic regulation. Such indemnification has become a principle in war upon land, and it may become a question of the future how, by domestic regulation, to deal with captures by the enemy of property at sea. In the case of naval war, however, the circumstances are not exactly the same. After the outbreak of war, every shipowner and shipper belonging to a belligerent State knows the risk he incurs in sending ships or goods across sea. He has, moreover, the option of keeping ship or cargo in port, or of paying war rates of insurance, or again, the shipper has the option of sending his goods under the protection of a neutral flag. If shipowner or shipper expose ship or cargo to the risks of capture, it is that he has calculated the chances of escape, and has chosen to run the risks. To indemnify either for losses incurred might be to relieve them from the consequences of their want of foresight and caution. Still, when their property is captured and confiscated, a proper record of the confiscation is as a fact kept, the ship and cargo are valued or sold, and the State whose flag the ship carried *can* indemnify the owner, and thus here again spread over the community a loss suffered by the individual citizen. It is conceivable that means may some day be devised of indemnifying for capture at sea on some scheme of valuation, combined with a licence to put to sea; but on these matters no experiments seem yet to have been made by which we can judge."[1]

These reflections and suggestions, especially that contained in the last paragraph, were the subject of a report presented at the Rouen Meeting of the Association in 1900 by Mr. (now Mr. Justice) Wood Renton.[2]

The question of a State guarantee of war risks had long been under consideration by British shipping interests.[3] Mr. Stanley Metcalfe, at the above mentioned Rouen Meeting of the International Law Association, gave an interesting account of the efforts made to deal with these risks. After rejection by Lord Salisbury, on behalf of the British Government, of a proposal to join in a scheme of combined mutual and State insurance, in December 1898, Mr. Metcalfe made a report to the Directors of the North of England Protecting and Indemnity Association with a view to solving the difficulty by a scheme of mutual aid. The main points in this report were as follows:

"(1) If a Third Class of this Association be formed to cover war risks, I presume that it will be on the basis of insured values, for the protection of vessels under the British Flag, against the risks excluded from an ordinary Policy on Hull by the 'Free from Capture and Seizure' clause; that this protection will commence from the Declaration of War, or from such time as may be fixed by the Directors; that there will be warranties against carrying Contraband of War (excepting so far as shipments made before a

[1] *International Law Association Report* for 1899, p. 88.

[2] *International Law Association Report* for 1900, p. 233.

[3] See *Report of the Chamber of Shipping of the United Kingdom* for 1887; Sir John Glover in *Contemporary Review*, May 1898; T. D. Millburn in *Shipping World*, November 30, 1898; T. Stanley Metcalfe, *Report, International Law Association*, Rouen Meeting, 1900, p. 236 *et seq.*

Declaration of War are concerned) and running blockades, and that this protection shall continue from year to year, so far as hostilities are concerned in which Great Britain is *not* a belligerent.

"(2) As freights would increase by leaps and bounds, according to the extent to which British tonnage is withdrawn from the carrying trade of the world, one member of the Association should not be able to benefit at the expense of another, and as we cannot foresee the extent or whereabouts of War Risks, or the important issues likely to be raised *if Great Britain be a belligerent*, it appears impossible to fix, in advance, an equitable rate of contribution on a mutual basis to meet such a contingency.

"(3) I, therefore, submit that, so far as War Risks are concerned, *when Great Britain is one of the belligerents*, the protection afforded by this Third Class should only extend to the completion of voyages or contracts (with certain limits to be afterwards defined) commenced *before* the Declaration of War.

"(4) That immediately war is declared by, or against, Great Britain, the rules shall provide for calling a meeting to extend or define the protection to be thereafter afforded by this Class, or to stipulate for such safeguards as to sailing with convoy, etc., as may be necessary for placing the risk on an equitable and mutual basis.

"The alternatives appear to be:—(*a*) To cover War Risks as, when, and where they arise; all members contributing on the same basis. (*b*) To fix a nominal premium for each ship and each voyage. (*c*) To fix a basis of contribution for each trade on the past system.

"As these risks vary to such an enormous extent, alternative (*a*) is unfair, and therefore impracticable from a mutual insurance point of view, unless combined with a warranty of sailing under convoy, with an adequate return for vessels whilst in safe port; alternative (*b*) is unworkable, as these rates vary from day to day, and from hour to hour; alternative (*c*) is open to a similar objection; but if the extent to which each trade should be handicapped for extra hazardous risks were agreed to *by the members* after war had been declared and the belligerents were known, a fairly equitable basis might be arrived at.

"This Third Class would provide against the consequences of war between foreign nations. It would also protect members until the termination of contracts entered into before a declaration of war by or against Great Britain and when something is known of the whereabouts, the nation and probable extent of the war risks, shipowners after conferring with the Government can then decide on the best means of mutual protection, instead of *now* rushing into an unknown liability, the ruinous extent of which they cannot even estimate."

This scheme was adopted by the Directors of the North of England Protecting and Indemnity Association, and in November 1898 a Third Class of this Association was formed, the capital of which in 1900 was upwards of £18,000,000, the following being the principal rule by which it was governed:

"When, in the opinion of the Directors, war between Great Britain and another maritime Power is imminent, or when war shall break out between Great Britain and another maritime Power, the Directors shall at once, if possible, consult the Ministers of the Crown, and shall also immediately summon a general meeting of the members for the purpose of submitting to them such additional rules, or such alterations or repeal of the existing rules, as may be necessary, or desirable, in the interests of the members, or of the Empire. The members at such general meeting may adopt the additional rules, or alterations, or repeal, with such amendments or additional rules as they may think fit, whether defining, enlarging, or restricting in any way whatsoever the protection and indemnity thereafter to be afforded to members of this class, or making any differences between the steamships entered by forming additional sections, or by varying the rates of contribution payable by members, according to any circumstance affecting, or which may be considered to affect, the war risks to which they are, or may be, exposed. Unless, and until, such general meeting is summoned, and unless, and until, the members at such general meeting alter, or add to, or repeal, the rules,

and until the date or dates fixed by the members at such general meeting for the altered or additional rules or repeal to come into force and take effect, and except as provided by such altered or additional rules or repeal, the protection and indemnity afforded by this class shall be, and continue to be, as provided by the rules existing at the time."

The effect of this, so far as British shipowners were concerned, Mr. Metcalfe contended, was to afford complete indemnification for capture at sea.

The question of National Indemnity and National Insurance was revived later on before the "Royal Commission on Supply of Food and Raw Material in Time of War."[1] The alternative suggestions made were: (*a*) that the cost of insuring against war risks be reimbursed to the shipowner or merchant by Government; or (*b*) that Government itself undertake the insurance of shipowners and shippers; or (*c*) that Government make good to shipowners and shippers all or part of their losses by capture. The last of these alternatives was the one which received most support from the witnesses heard.[2]

[1] *Report, with Minutes of Evidence and Appendices*, 3 vols., 1905.

The chief arguments in favour of national indemnification were that it would be more economical than private insurance, because the country would only have to pay for actual losses; there being no premium, nothing would have to be paid on ships and goods which came safely to port; that premiums contain a large scare element both before and during war; that it was more equitable to charge the risks to the taxpayer generally than to the consumer; that abnormal rise in the price of imported commodities would be avoided; that a larger number of ships would be kept at sea; and that the greater their number, the smaller would be the percentage of losses, consequently the larger would be the supplies which would arrive in safety; that war insurance, which would otherwise have to be paid on exported goods, and cause British manufacturers to lose foreign markets, would be avoided, etc.

On the other hand, it was contended that a system of national indemnification was not the most economical way of meeting war losses; that competition among underwriters was so great that there was little chance of premiums becoming very high; that such a system would lead shipowners to run risks which they could not otherwise afford to do; that frauds, such as profiting by the indemnity to get rid of inferior ships, would be made possible; that there would be difficulty in separating the war risk from sea risks, and in checking valuations, etc.

The Commission, discriminating between the views in favour of and those against the proposed systems, decided as follows:

"We are . . . of opinion that a system of national indemnity against loss from capture by the enemy would operate both as an additional security to the maintenance of our over-sea trade and as an important steadying influence upon prices. . . . We wish to place distinctly on record our opinion that the advantages to be gained from some well-considered scheme of the kind seem to us largely to outweigh any objections which have been stated to us. We do not feel ourselves competent to draw out the precise terms of such a scheme, but we look rather in the direction of a National Indemnity than in that of National Insurance. We recognise that National Insurance may at first sight appear more attractive, since the amount received by the State in premiums would be something to set against what might have to be paid out on account of losses. But this economy seems to us to be more apparent than real, when it is remembered that the amount paid in premiums, both on

[2] Different schemes were put forward by Mr. Wilding, manager of the Leyland and Dominion Line; Mr. Douglas Owen, secretary of the Alliance Marine and General Assurance Company; Capt. Inglefield, R.N.; Mr. Booth, manager of the Booth Line; Sir John Glover, chairman of Lloyds' Register of British and Foreign Shipping; and Mr. Leverton Harris, M.P. Evidence was also given by Sir H. Hozier, K.C.B., then secretary of Lloyds; Admiral Sir C. Bridge, G.C.B.; Mr. Gow, secretary of the Union Marine Insurance Company; Mr. Haslam, manager of the Indemnity Mutual Marine Insurance Company, etc.

the goods carried and the ships in which they come, is almost certain to be paid eventually by the consumer. Similarly, it has been suggested that National Insurance, owing to the payment of a premium by the shipowner, does not, to the same extent as National Indemnity, imply preferential treatment of a single industry; but, even granting that some preference would accrue to the shipowner, the importance of maintaining efficient means of transport in time of war and of keeping rates of freight, so far as possible, at a normal level, is so great as to outweigh this objection. Moreover, it appears to us that a scheme of National Indemnity will leave it more open to the Government, acting through the Admiralty or otherwise, to impose conditions, to prescribe rules, and to keep greater control of the risks that, in some form or another, will undoubtedly have to be run."

The Commission in conclusion recommended the appointment of a small expert Committee to investigate the subject and frame a scheme, after consultation with underwriters and others interested in the British mercantile marine.

At a general meeting of the Liverpool Steamship Owners' Association on October 13, 1905, a statement strongly supporting the Royal Commission's recommendations was laid before the meeting by its chairman,[1] and a resolution adopted in favour of communicating with the other Shipowning Associations, and, through the Liverpool Chamber of Commerce, with the Chambers of Commerce throughout the country, with a view to the necessary representations being made to the Government to secure the appointment, at an early date, of the proposed Expert Committee.

The Liverpool Shipowners' Association supported the Steamship Owners' resolution, adding a rider to the effect that private property should be altogether exempt from capture in time of war.

On October 31 the Council of The Incorporated Chamber of Commerce of Liverpool adopted a similar resolution, also adding that they were of opinion that the Expert Committee, if appointed by the Government, "should be instructed to consider also the desirability of effecting an international agreement that private property should be altogether exempt from capture in time of war."

In their replies to the Liverpool Chamber's circular to other Chambers, the Aberdeen, Leith, Blackburn, Birmingham, Grimsby, Bradford, Newport, Bristol, Plymouth, Birstall, Belfast, and Limerick Chambers promised to support the resolution; the Walsall, Guernsey, Coventry, Dudley, Newcastle, and Glasgow Chambers, to give the matter consideration; the South of Scotland and Wakefield Chambers were opposed to the resolution.

Eventually in July 1906 a Committee[2] was appointed by the Treasury to investigate the question, and report on the following points:

"(1) Whether it is desirable that the State should undertake to make good to shipowners and traders losses incurred through the capture of shipping by the enemy in time of war;

"(2) If so, whether such indemnity should be granted gratuitously, or should be coupled with the payment of premiums calculated to recoup the State—either wholly or in part—for the cost to be incurred; and

"(3) What conditions should be attached to the grant of the indemnity, and what arrangements should be made for the proper working of the scheme."

[1] The chairman was Mr. T. F. Harrison, of Messrs. Rankin, Gilmour, & Co. The statement was elicited by two articles on the subject by Mr. Russell Rea, M.P., published in the *Westminster Gazette* on April 4 and September 5, 1905 respectively.

[2] The Committee was composed of the following gentlemen:—The Right Hon. Austen Chamberlain, M.P.; the Right Hon. Sir R. B. Finlay, K.C., G.C.M.G.; Sir Thomas Glen Coates, Bart., M.P.; Sir J. L. Mackay, G.C.M.G.; Sir George Sydenham Clarke, G.C.M.G.; Sir George H. Murray, K.C.B.; Mr. H. Llewellyn Smith, C.B.; Captain C. L. Ottley, R.N., M.V.O.; Mr. Edward Beauchamp, M.P.; Mr. Henry Neville Gladstone; Mr. Frederick Huth Jackson, and Mr. Arthur Lindley; Mr. George H. Duckworth to act as secretary.

## XV[A]

# MERCHANT VESSELS AS CRUISERS

AMONG the subjects which, it is announced, will be included in the Russian programme of the subjects submitted for discussion at the second Hague Conference, is the question of the rules which should govern the transformation of merchant ships into vessels of war. Usage has already practically solved the only question of principle which seems to arise in connection with it, namely, as to whether using merchant ships as cruisers is within the operation of the clause of the Declaration of Paris abolishing privateering. It seems generally admitted that a privateer is a private vessel, the captain of which receives a commission (*letters of marque*) to carry on war and effect captures at his own risk and expense; and that a merchant vessel transformed into a cruiser with a naval officer in command, flying the official naval colours and acting under the direct orders and at the risk and expense of the official naval department, is not a privateer.

In the Spanish-American War, neither belligerent being a party to the Declaration of Paris, both were free to employ privateers against each other, and, as a fact, the Spanish Government reserved the right to issue letters of marque, though it made no use of it. It declared, at the same time, that for the purpose of cruising, it would organise a service of "auxiliary cruisers of the Navy," composed of "ships of the Spanish mercantile navy," and "subject to the statutes and jurisdiction of the navy." Such a force was organised by the United States under the command of officers of the Navy. One of these was the *City of Paris*,[1] one of a class of steamers which, under the provisions of the United States mail-subsidy Act of March 3, 1891, were subject to be taken over by the United States Government as cruisers or transports. By a charter-party, entered into April 30, 1898, between the owning company[2] and the Secretary of the Navy, possession of the ship was transferred to the U.S. Government. She was then heavily armed, and converted into an auxiliary cruiser. The charter-party provided that the ship should be "manned, victualled, and supplied at the expense of the charterer." The charterer was also to pay all other expenses, and at the termination of the charter, which was to be at charterer's

[1] She was known as the *Yale* while acting as a cruiser, and is now known as the *Philadelphia*.

[2] The *American Line*.

will, the ship was to be returned to the owner in good repair, less ordinary wear and tear. A supplementary agreement provided that the ship was "to be manned by regular officers and crew, and in addition thereto was to take on board two naval officers, a marine officer, and a guard of thirty marines, and was to be victualled and supplied with two months' provisions and about four thousand tons of coal; the actual cost to the owner of such additional equipment and services to be reimbursed by the charterer upon bills to be certified by the senior naval officer on board." There were also stipulations protecting the owner against all expenses and liability, and a provision that, during the continuation of the supplementary agreement, the steamship was to be "under the entire control of the senior naval officer on board." Under these agreements the Government of the United States placed on board the ship a captain and a lieutenant of the Navy and a marine guard of 25 enlisted men. "There were also on board 269 other persons, not commissioned by or regularly enlisted in the service of the United States, but comprising the ship's company, both officers and men, who were doing duty on board and were borne on the books of the ship." On a question which arose as to the distribution of prize money, it was held [1] that she was neither a "vessel of the Navy" nor a privateer, but came within the statutory class of vessels "not of the Navy, but controlled by either executive department," and was, as an "armed vessel in the service of the United States," "entitled," in the words of the statute, "to an award of prize money in the same manner as if such vessel belonged to the Navy." [2]

[1] The *Rita*, 89 Fed. Rep. 763.

[2] Most of these particulars are taken from Bassett Moore's *Digest of International Law*, 1907, vii. p. 542.

The question had already been raised in connection with the proposal of Prussia to create a "volunteer navy" in 1870. The French Government protested against it as contrary to the Declaration of Paris, but the then British Secretary for Foreign Affairs, Lord Granville, whose attention was drawn to the proposal, did not find that the conditions in which Prussia contemplated using the volunteer navy fell within the scope of the Declaration. Probably this was to some extent because Prussia had announced that she would not capture private property at sea. France would not agree to observe a like exemption, and Prussia then abandoned it also. Prussia, at the same time, abandoned also her scheme of forming a "volunteer navy." As the Prussian officers, though wearing naval uniform, were to be the ordinary merchant officers and the crew, and were to be furnished by the owners of the ships, the difference between such a cruiser and a privateer would have been less marked than in the case of the United States cruisers.

The system followed in France of having a naval officer in command of certain subsidised liners and mail-ships facilitates the transformation into cruisers. The Russian Government's so-called volunteer fleet is organised on a more or less similar plan.[1]

[1] See Smith and Sibley, *International Law* (2nd ed. 1907). These authors in their interesting chapter (chap. ii.) on the subject do not set up any practical criterion of distinction.

The most reasonable criterion for testing the application of the Declaration of Paris seems to be that any warship under the direct control and responsibility of a belligerent State, and bearing the outward marks of being so, is not privateer. As in the case of combatants on land,[2] some rules seem desirable to enforce the use of certain outward attributes, marking the belligerent character of merchant vessels transformed into cruisers.[3]

[2] See *Regulations* for war on land, Art. 1, p. 233.

[3] Compare, however, Art. 24 of the *Regulations* for war on land permitting the continuance of *ruses of war*. In practice it is considered permissible even to use the flag of a neutral State to get within firing range of the enemy ship, a practice which it should be one of the first duties of the second Hague Conference, if it deals with naval war, to condemn. The whole question of what is legitimate as a ruse of war needs examination.

## XVI A

# EFFECTIVENESS AND NOTICE OF BLOCKADES

Two controversies are involved in the practice of blockades which require examination, both of which are capable of becoming a source of international entanglement. The one relates to the meaning and scope of the term "effective," and the other to the extent of the notice of blockade which suffices to make a neutral vessel violating it liable to capture and confiscation.

The Declaration of Paris (1856), provides that a blockade to be binding on neutral Powers shall be effective.[1] If it does not expose vessels making for the blockaded port to seizure, it evidently is not effective. The test, then, is the real ability to stop vessels.[2] A blockade by vessels easily evaded would not be effective, and would therefore not be binding. In other words, a neutral vessel captured by a blockading force which had failed to stop a certain number of others may be held to have been captured improperly. And yet it is not likely that a Prize Court would declare that the blockade was not effective.

This might result in a conflict between a neutral State powerful enough to insist on its contention and a belligerent State powerless, under its constitutional law, to yield to what expediency or a sense of equity might lead its Government to regard as a just claim.

Effectiveness is a matter of conclusion from facts. "Only such blockades as shall be duly proclaimed and maintained by adequate force, in conformity with the law of nations, will be observed and respected by the United States," wrote Mr. Seward, United States Secretary of State, to Mr. Sullivan, Minister to Columbia, in 1867 (June 13). If the neutral and belligerent States in question do not agree about the facts or do not agree as to whether the admitted facts constitute "effectiveness," an international difference at once arises. When a single maritime Power ruled the sea, questions of this kind were dealt with on a more or less "simple plan." The impending growth in maritime

[1] See text of the Declaration, p. 291.

[2] The provision in the Declaration explains "effective" in this sense.

strength of other Powers introduces new conditions into the consideration of the subject, and a stricter definition and regulation of the institution of blockade might avert conflicts difficult to settle without some friction in time of war.

Following out the same order of ideas, it seems desirable to determine finally whether a vessel which has reached the blockaded port without having received individual notice from a blockading vessel, properly entered on its log or papers, should remain liable to capture, as under the existing practice, beyond the blockaded area.

As regards the requisite notice, the following provisions in the instructions given to the United States blockading vessels and cruisers in June 1898, sum up the latest Anglo-Saxon practice :—

"Neutral vessels are entitled to notification of a blockade before they can be made prize for its attempted violation. The character of this notification is not material. It may be actual, as by a vessel of the blockading force, or *constructive, as by a proclamation of the Government maintaining the blockade, or by common notoriety*. If a neutral vessel can be shown to have had notice of the blockade *in any way*, she is good prize, and should be sent in for adjudication; but should formal notice not have been given, *the rule of constructive knowledge arising from notoriety* should be construed in a manner liberal to the neutral.

"Vessels appearing before a blockaded port, having sailed without notification, are entitled to actual notice by a blockading vessel. They should be boarded by an officer, who should enter in the ship's log the fact of such notice, such entry to include the name of the blockading vessel giving notice, the extent of the blockade, the date and place, verified by his official signature. The vessel is then to be set free; and should she again attempt to enter the same or any other blockaded port as to which she has had notice, she is good prize.

"Should it appear from a vessel's clearance that she sailed after notice of blockade had been communicated to the country of her port of departure, or *after the fact of blockade had, by a fair presumption, become commonly known* at that port, she should be sent in as a prize."

The passages in italics are not in accordance with the views held by other States which do not recognise the binding character of a diplomatic notification or of constructive notice from notoriety. The grounds in favour of the Anglo-Saxon practice are at the present day strengthened by the fact that it is now practically impossible to remain ignorant of a general notice of blockade in

any port of the world. The question, however, is to find a means of leaving as little as possible to the discretion of a Prize Court.[1]

[1] Comp. p. 108.

I have endeavoured in the suggestions[2] I have drawn up to adapt the existing rules, as far as possible, to conditions of an age which requires simplicity and celerity rather than discrimination; to avoid possible complications is necessarily the chief object of reform in international practice, even though it be at the expense of some interesting subtleties of theory, and though principles may not be carried out to their final conclusions.

[2] See p. 165.

# APPENDICES

# APPENDICES

## 1. TEXT OF HAGUE CONVENTIONS, DECLARATIONS, ETC. (1899), WITH ENGLISH TRANSLATIONS

### (*a*) INTERNATIONAL CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

*Signed at The Hague, July* 29, 1899

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes; Sa Majesté l'Empereur d'Allemagne, Roi de Prusse; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie; Sa Majesté le Roi des Belges; Sa Majesté l'Empereur de Chine; Sa Majesté le Roi de Danemark; Sa Majesté le Roi d'Espagne et en son nom Sa Majesté la Reine-Régente du Royaume; le Président des États-Unis d'Amérique; le Président des États-Unis Mexicains; le Président de la République Française; Sa Majesté le Roi des Hellènes; Sa Majesté le Roi d'Italie; Sa Majesté l'Empereur du Japon; Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau; Son Altesse le Prince de Monténégro; Sa Majesté la Reine des Pays-Bas; Sa Majesté Impériale le Schah de Perse; Sa Majesté le Roi de Portugal et des Algarves, &c.; Sa Majesté le Roi de Roumanie; Sa Majesté l'Empereur de Toutes les Russies; Sa Majesté le Roi de Serbie; Sa Majesté le Roi de Siam; Sa Majesté le Roi de Suède et de Norvège; le Conseil Fédéral Suisse; Sa Majesté l'Empereur des Ottomans et Son Altesse Royale le Prince de Bulgarie;

Animés de la ferme volonté de concourir au maintien de la paix générale;

Résolus à favoriser de tous leurs efforts le réglement amiable des conflits internationaux;

Reconnaissant la solidarité qui unit les membres de la société des nations civilisées;

Voulant étendre l'empire du droit et fortifier le sentiment de la justice internationale;

Convaincus que l'institution permanente d'une juridiction arbitrale, accessible à tous, au sein des Puissances indépendantes peut contribuer efficacement à ce résultat;

(*Official Translation*).

Her Majesty the Queen, &c., &c.:

Animated by a strong desire to concert for the maintenance of general peace;

Resolved to second by their best efforts the friendly settlement of international disputes;

Recognising the solidarity which unites the members of the society of civilised nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Considérant les avantages d'une organisation générale et régulière de la procédure arbitrale ;

Estimant avec l'auguste Initiateur de la Conférence Internationale de la Paix qu'il importe de consacrer dans un accord international des principes d'équité et de droit sur lesquels reposent la sécurité des États et le bien-être des peuples ;

Désirant conclure une Convention à cet effet ont nommé pour leurs Plénipotentiaires, savoir :

Having regard to the advantages attending the general and regular organisation of arbitral procedure ;

Sharing the opinion of the august Initiator of the International Peace Conference that it is expedient to record in an International Agreement the principles of equity and right on which are based the security of States and the welfare of peoples ;

Being desirous of concluding a Convention to this effect, have appointed as their Plenipotentiaries : &c., &c., &c.

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, son Excellence le Trés Honorable Baron Pauncefote de Preston, Membre du Conseil Privé de Sa Majesté, son Ambassadeur Extraordinaire et Plénipotentiaire à Washington ; Sir Henry Howard, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, son Excellence le Comte de Münster, Prince de Derneburg, son Ambassadeur à Paris ;

Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie, son Excellence le Comte R. de Welsersheimb, son Ambassadeur Extraordinaire et Plénipotentiaire ; M. Alexandre Okolicsanyi d'Okolicsna, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté le Roi des Belges, son Excellence M. Auguste Beernaert, son Ministre d'État, Président de la Chambre des Représentants ; M. le Comte Degrelle Rogier, son Envoyé Extraordinaire et Ministre Plénipotentiaire à la Haye ; M. le Chevalier Descamps, Sénateur ;

Sa Majesté l'Empereur de Chine, M. Yang Yü, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg ;

Sa Majesté le Roi de Danemark, son Chambellan Fr. E. de Bille, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Londres ;

Sa Majesté le Roi d'Espagne et en son nom Sa Majesté la Reine-Régente du Royaume, son Excellence le Duc de Tetuan, Ancien Ministre des Affaires Étrangères ; M. W. Ramirez de Villa Urrutia, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Bruxelles ; M. Arthur de Baguer, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Le Président des États-Unis d'Amérique, son Excellence M. Andrew D. White, Ambassadeur des États-Unis à Berlin ; M. Seth Low, Président de l'Université "Columbia" à New York ; M. Stanford Newel, Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ; M. Alfred T. Mahan, Capitaine de Vaisseau ; M. William Crozier, Capitaine d'Artillerie ;

Le Président des États-Unis Mexicains, M. de Meir, Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ; M. Zenil, Ministre-Résident à Bruxelles ;

Le Président de la République Française, M. Léon Bourgeois, Ancien Président du Conseil, Ancien Ministre des Affaires Étrangères, Membre de la Chambre des Députés ; M. Georges Bihourd, Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ; M. le Baron d'Estournelles de Constant, Ministre Plénipotentiaire, Membre de la Chambre des Députés ;

Sa Majesté le Roi des Hellènes, M. N. Delyanni, Ancien Président du Conseil, Ancien Ministre des Affaires Étrangères, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ;

Sa Majesté le Roi d'Italie, son Excellence le Comte Nigra, son Ambassadeur à Vienne, Sénateur du Royaume ; M. le Comte A. Zannini, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ; M. le Commandeur Guido Pompilj, Député au Parlement Italien ;

Sa Majesté l'Empereur du Japon, M. I. Motono, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Bruxelles ;

Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau, son Excellence M. Eyschen, son Ministre d'État, Président du Gouvernement Grand-Ducal ;

Son Altesse le Prince de Monténégro, son Excellence M. le Conseiller Privé Actuel de Staal, Ambassadeur de Russie à Londres ;

Sa Majesté la Reine des Pays-Bas, M. le Jonkheer, A. P. C. van Karnebeek, Ancien Ministre des Affaires Étrangères, Membre de la Seconde Chambre des États-Généraux ; M. le Général J. C. C. den Beer Poortugael, Ancien Ministre de la Guerre, Membre du Conseil d'État ; M. T. M. C. Asser, Membre du Conseil d'État ; M. E. N. Rahusen, Membre de la Première Chambre des États-Généraux ;

Sa Majesté Impériale le Schah de Perse, son Aide-de-camp Général Mirza Riza Khan, Arfa-ud-Dovleh, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg et à Stockholm ;

Sa Majesté le Roi de Portugal et des Algarves, &c., M. le Comte de Macedo, Pair du Royaume, Ancien Ministre de la Marine et des Colonies, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Madrid ; M. d'Ornellas et Vasconcellos, Pair du Royaume, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg ; M. le Comte de Selir, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté le Roi de Roumanie, M. Alexandre Beldiman, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Berlin ; M. Jean N. Papiniu, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté l'Empereur de Toutes les Russies, son Excellence M. le Conseiller Privé Actuel de Staal, son Ambassadeur à Londres ; M. de Martens, Membre Permanent du Conseil du Ministère Impérial des Affaires Étrangères, son Conseiller Privé ; son Conseiller d'État Actuel de Basily, Chambellan, Directeur du Premier Département du Ministère Impérial des Affaires Étrangères ;

Sa Majesté le Roi de Serbie, M. Miyatovitch, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Londres et à La Haye ;

Sa Majesté le Roi de Siam, M. Phya Suriya Nuvatr, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg et à Paris ; M. Phya Visuddha Suriyasakti, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye et à Londres ;

Sa Majesté le Roi de Suède et de Norvège, M. le Baron de Bildt, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Rome ;

Le Conseil Fédéral Suisse, M. le Dr. Arnold Roth, Envoyé Extraordinaire et Ministre Plénipotentiaire à Berlin ;

Sa Majesté l'Empereur des Ottomans, son Excellence Turkhan Pacha, Ancien Ministre des Affaires Étrangères Membre de son Conseil d'État ; Nouri Bey, Secrétaire-Général au Ministère des Affaires Étrangères ;

Son Altesse Royale le Prince de Bulgarie, M. le Dr. Dimitri Stancioff, Agent Diplomatique à Saint-Pétersbourg ; M. le Major Christo Hessaptchieff, Attaché Militaire à Belgrade ;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes :—

TITRE I.—*Du Maintien de la Paix générale.*

ARTICLE I.

En vue de prévenir autant que possible le recours à la force dans les rapports entre les États, les Puissances Signataires conviennent d'employer tous leurs efforts pour assurer le réglement pacifique des différends internationaux.

TITRE II.—*Des Bons Offices et de la Médiation.*

ARTICLE II.

En cas de dissentiment grave ou de conflit, avant d'en appeler aux armes, les Puissances Signataires conviennent d'avoir recours, en tant que les circonstances le permettront, aux bons offices ou à la médiation d'une ou de plusieurs Puissances amies.

ARTICLE III.

Indépendamment de ce recours, les Puissances Signataires jugent utile qu'une ou plusieurs Puissances étrangères au conflit offrent de leur propre initiative, en tant que les circonstances s'y prêtent, leurs bons offices ou leur médiation aux États en conflit.

Le droit d'offrir les bons offices ou la médiation appartient aux Puissances étrangères au conflit, même pendant le cours des hostilités.

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions :—

TITLE I.—*On the Maintenance of General Peace.*

ARTICLE I.

With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences.

TITLE II.—*On Good Offices and Mediation.*

ARTICLE II.

In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

ARTICLE III.

Independently of this recourse, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

L'exercice de ce droit ne peut jamais être considéré par l'une ou l'autre des Parties en litige comme un acte peu amical.

ARTICLE IV.

Le rôle du médiateur consiste à concilier les prétensions opposées et à apaiser les ressentiments qui peuvent s'être produits entre les Etats en conflit.

ARTICLE V.

Les fonctions du médiateur cessent du moment où il est constaté, soit par l'une des Parties en litige, soit par le médiateur lui même, que les moyens de conciliation proposés par lui ne sont pas acceptés.

ARTICLE VI.

Les bons offices et la médiation, soit sur le recours des Parties en conflit, soit sur l'initiative des Puissances étrangères au conflit, ont exclusivement le caractère de conseil et n'ont jamais force obligatoire.

ARTICLE VII.

L'acceptation de la médiation ne peut avoir pour effet, sauf Convention contraire, d'interrompre, de retarder, ou d'entraver la mobilisation et autres mesures préparatoires à la guerre.

Si elle intervient après l'ouverture des hostilités, elle n'interrompt pas, sauf Convention contraire, les opérations militaires en cours.

ARTICLE VIII.

Les Puissances Signataires sont d'accord pour recommander l'application, dans les circonstances qui le permettent, d'une médiation spéciale sous la forme suivante :—

En cas de différend grave compromettant la paix, les États en conflit choisissent respectivement une Puissance à laquelle ils confient la mission d'entrer en rapport direct avec la Puissance choisie d'autre part, à l'effet de prévenir la rupture des relations pacifiques.

Pendant la durée de ce mandat dont le terme, sauf stipulation contraire, ne peut excéder trente jours, les États en litige cessent tout rapport direct au sujet du conflit, lequel est considéré comme déféré exclusivement aux Puissances Médiatrices. Celles-ci doivent appliquer tous leurs efforts à régler le différend.

En cas de rupture effective des relations pacifiques, ces Puissances demeurent chargées de la mission commune de profiter de toute occasion pour rétablir la paix.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

ARTICLE IV.

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE V.

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

ARTICLE VI.

Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice, and never have binding force.

ARTICLE VII.

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

ARTICLE VIII.

The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form :—

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

TITRE III.—*Des Commissions Internationales d'Enquête.*

ARTICLE IX.

Dans les litiges d'ordre international n'engageant ni l'honneur ni des intérêts essentiels et provenant d'une divergence d'appréciation sur des points de fait, les Puissances Signataires jugent utile que les Parties qui n'auraient pu se mettre d'accord par les voies diplomatiques instituent, en tant que les circonstances le permettront, une Commission Internationale d'Enquête chargée de faciliter la solution de ces litiges en éclaircissant, par un examen impartial et consciencieux, les questions de fait.

ARTICLE X.

Les Commissions Internationales d'Enquête sont constituées par Convention spéciale entre les Parties en litige.

La Convention d'Enquête précise les faits à examiner et l'étendue des pouvoirs des Commissaires.

Elle règle la procédure.

L'enquête a lieu contradictoirement.

La forme et les délais à observer, en tant qu'ils ne sont pas fixés par la Convention d'Enquéte, sont déterminés par la Commission elle-même.

ARTICLE XI.

Les Commissions Internationales d'Enquête sont formées, sauf stipulation contraire, de la manière déterminée par l'Article XXXII de la présente Convention.

ARTICLE XII.

Les Puissances en litige s'engagent à fournir à la Commission Internationale d'Enquête, dans la plus large mesure qu'Elles jugeront possible, tous les moyens et toutes les facilités nécessaires pour la connaissance complète et l'appréciation exacte des faits en question.

ARTICLE XIII.

La Commission Internationale d'Enquête présente aux Puissances en litige son Rapport signé par tous les membres de la Commission.

ARTICLE XIV.

Le Rapport de la Commission Internationale d'Enquête, limité à la constatation des faits, n'a nullement le caractère d'une sentence arbitrale. Il laisse aux Puissances en litige une entière liberté pour la suite à donner à cette constatation.



TITLE III.—*On International Commissions of Inquiry.*

ARTICLE IX.

In differences of an international nature involving neither honour nor vital interests, and arising from a difference of opinion on points of fact, the Signatory Powers recommend that the parties, who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

ARTICLE X.

The International Commissions of Inquiry are constituted by special agreement between the parties in conflict.

The Convention for an inquiry defines the facts to be examined and the extent of the Commissioners' powers.

It settles the procedure.

On the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the Inquiry Convention, are decided by the Commission itself.

ARTICLE XI.

The International Commissions of Inquiry are formed, unless otherwise stipulated, in the manner fixed by Article XXXII. of the present Convention.

ARTICLE XII.

The Powers in dispute engage to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with, and to accurately understand, the facts in question.

ARTICLE XIII.

The International Commission of Inquiry communicates its Report to the conflicting Powers, signed by all the members of the Commission.

ARTICLE XIV.

The Report of the International Commission of Inquiry is limited to a statement of facts, and has in no way the character of an Arbitral Award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement.

## Titre IV.—*De l'Arbitrage International.*

### Chapitre I.—*De la Justice Arbitrale.*

#### ARTICLE XV.

L'arbitrage international a pour objet le réglement de litiges entre les États par des Juges de leur choix et sur la base du respect du droit.

#### ARTICLE XVI.

Dans les questions d'ordre juridique, et en premier lieu dans les questions d'interprétation ou d'application des Conventions Internationales, l'arbitrage est reconnu par les Puissances Signataires comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques.

#### ARTICLE XVII.

La Convention d'Arbitrage est conclue pour des contestations déjà nées ou pour des contestations éventuelles.

Elle peut concerner tout litige ou seulement les litiges d'une catégorie déterminée.

#### ARTICLE XVIII.

La Convention d'Arbitrage implique l'engagement de se soumettre de bonne foi à la sentence arbitrale.

#### ARTICLE XIX.

Indépendamment des Traités généraux ou particuliers qui stipulent actuellement l'obligation du recours à l'arbitrage pour les Puissances Signataires, ces Puissances se réservent de conclure, soit avant la ratification du présent Acte, soit postérieurement, des accords nouveaux, généraux, ou particuliers, en vue d'étendre l'arbitrage obligatoire à tous les cas qu'elles jugeront possible de lui soumettre.

### Chaptire II.—*De la Cour Permanente d'Arbitrage.*

#### ARTICLE XX.

Dans le but de faciliter le recours immédiat à l'arbitrage pour les différends internationaux qui n'ont pu être réglés par la voie diplomatique, les Puissances Signataires s'engagent à organiser une Cour Permanente d'Arbitrage, accessible en tout temps et fonctionnant, sauf stipulation contraire des Parties, conformément aux règles de procédure insérées dans la présente Convention.

## Title IV.—*On International Arbitration.*

### Chapter I.—*On the System of Arbitration.*

#### ARTICLE XV.

International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law.

#### ARTICLE XVI.

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognised by the Signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

#### ARTICLE XVII.

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute, or only disputes of a certain category.

#### ARTICLE XVIII.

The Arbitration Convention implies the engagement to submit loyally to the Award.

#### ARTICLE XIX.

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later, new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

### Chapter II.—*On the Permanent Court of Arbitration.*

#### ARTICLE XX.

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Signatory Powers undertake to organise a permanent Court of Arbitration, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the Rules of Procedure inserted in the present Convention.

ARTICLE XXI.

La Cour Permanente sera compétente pour tous les cas d'arbitrage, á moins qu'il n'y ait entente entre les Parties pour l'établissement d'une juridiction spéciale.

ARTICLE XXII.

Un Bureau International établi à La Haye sert de greffe á la Cour.

Ce Bureau est l'intermédiaire des communications relatives aux réunions de celle-ci.

Il a la garde des archives et la gestion de toutes les affaires administratives.

Les Puissances Signataires s'engagent à communiquer au Bureau International de La Haye une copie certifiée conforme de toute stipulation d'arbitrage intervenue entre elles et de toute sentence arbitrale les concernant et rendue par des juridictions spéciales.

Elles s'engagent à communiquer de même au Bureau, les lois, règlements, et documents constatant éventuellement l'exécution des sentences rendues par la Cour.

ARTICLE XXIII.

Chaque Puissance Signataire désignera, dans les trois mois qui suivront la ratification par elle du présent Acte, quatre personnes au plus, d'une compétence reconnue dans les questions de droit international, jouissant de la plus haute considération morale et disposées à accepter les fonctions d'arbitres.

Les personnes ainsi désignées seront inscrites, au titre de membres de la Cour, sur une liste qui sera notifiée à toutes les Puissances Signataires par les soins du Bureau.

Toute modification à la liste des arbitres est portée, par les soins du Bureau, à la connaissance des Puissances Signataires.

Deux ou plusieurs Puissances peuvent s'entendre pour la désignation en commun d'un ou de plusieurs membres.

La même personne peut être désignée par des Puissances différentes.

Les membres de la Cour sont nommés pour un terme de six ans. Leur mandat peut être renouvelé.

En cas de décès ou de retraite d'un membre de la Cour, il est pourvu á son remplacement selon le mode fixé pour sa nomination.

ARTICLE XXIV.

Lorsque les Puissances Signataires veulent s'adresser à la Cour Permanente pour le réglement d'un différend survenu entre elles, le choix des arbitres appelés a former le Tribunal compétent pour statuer sur ce différend, doit être fait dans la liste générale des membres de la Cour.

ARTICLE XXI.

The permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

ARTICLE XXII.

An International Bureau, established at The Hague, serves as record office for the Court.

This Bureau is the channel for communications relative to the meetings of the Court.

It has the custody of the archives, and conducts all the administrative business.

The Signatory Powers undertake to communicate to the International Bureau at the Hague a duly certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by special Tribunals.

They undertake also to communicate to the Bureau the Laws, Regulations, and documents eventually showing the execution of the awards given by the Court.

ARTICLE XXIII.

Within the three months following its ratification of the present Act, each Signatory Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrators.

The persons thus selected shall be inscribed, as members of the Court, in a list which shall be notified by the Bureau to all the Signatory Powers.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Signatory Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place shall be filled in accordance with the method of his appointment.

ARTICLE XXIV.

When the Signatory Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the Arbitrators called upon to form the competent Tribunal to decide this difference must be chosen from the general list of members of the Court.

A défaut de constitution du Tribunal Arbitral par l'accord immédiat des Parties, il est procédé de la manière suivante :

Chaque Partie nomme deux arbitres et ceux-ci choisissent ensemble un surarbitre.

En cas de partage de voix, le choix du surarbitre est confié a une Puissance tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas à ce sujet, chaque Partie désigne une Puissance différente, et le choix du surarbitre est fait de concert par les Puissances ainsi désignées.

Le Tribunal étant ainsi composé, les Parties notifient au Bureau leur décision de s'adresser a la Cour et les noms des arbitres.

Le Tribunal Arbitral se réunit à la date fixée par les Parties.

Les membres de la Cour, dans l'exercice de leurs fonctions et en dehors de leur pays, jouissent des privilèges et immunités diplomatiques.

ARTICLE XXV.

Le Tribunal Arbitral siège d'ordinaire à La Haye.

Le siège ne peut, sauf le cas de force majeure, être changé par le Tribunal que de l'assentiment des Parties.

ARTICLE XXVI.

Le Bureau International de La Haye est autorisé à mettre ses locaux et son organisation a la disposition des Puissances Signataires pour le fonctionnement de toute juridiction spéciale d'arbitrage.

La juridiction de la Cour Permanente peut être étendue, dans les conditions prescrites par les règlements, aux litiges existant entre des Puissances non-Signataires ou entre des Puissances Signataires et des Puissances non-Signataires, si les Parties sont convenues de recourir à cette juridiction.

ARTICLE XXVII.

Les Puissances Signataires considèrent comme un devoir, dans le cas oú un conflit aigu menacerait d éclater entre deux ou plusieurs d'entre elles, de rappeler a celles-ci que la Cour Permanente leur est ouverte.

En conséquence, elles déclarent que le fait de rappeler aux Parties en conflit les dispositions de la présente Convention, et le conseil donné, dans l'intérêt superieur de la paix, de s'adresser à la Cour Permanente ne peuvent être considérés que comme actes de bons offices.

ARTICLE XXVIII.

Un Conseil Administratif Permanent composé des Representants Diplomatiques des Puissances Signataires accrédités à La

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal the following course shall be pursued :—

Each party appoints two Arbitrators, and these together choose an Umpire.

If the votes are equal, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

The Tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court and the names of the Arbitrators.

The Tribunal of Arbitration assembles on the date fixed by the Parties.

The members of the Court, in the discharge of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ARTICLE XXV.

The Tribunal of Arbitration has its ordinary seat at The Hague.

Except in cases of necessity, the place of session can only be altered by the Tribunal with the assent of the parties.

ARTICLE XXVI.

The International Bureau at The Hague is authorised to place its premises and its staff at the disposal of the Signatory Powers for the operations of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the Regulations, be extended to disputes between non-Signatory Powers, or between Signatory Powers and non-Signatory Powers, if the parties are agreed on recourse to this Tribunal.

ARTICLE XXVII.

The Signatory Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the conflicting parties of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

ARTICLE XXVIII.

A Permanent Administrative Council composed of the Diplomatic Representatives of the Signatory Powers accredited to The Hague, and of the

Haye et du Ministre des Affaires Étrangères des Pays-Bas qui remplira les fonctions de Président, sera constitué dans cette ville le plus tôt possible après la ratification du présent Acte par neuf Puissances au moins.

Ce Conseil sera chargé d'établir et d'organiser le Bureau International, lequel demeurera sous sa direction et sous son contrôle.

Il notifiera aux Puissances la constitution de la Cour et pourvoira à l'installation de celle-ci.

Il arrêtera son règlement d'ordre ainsi que tous autres règlements nécessaires.

Il décidera toutes les questions administratives qui pourraient surgir touchant le fonctionnement de la Cour.

Il aura tout pouvoir quant à la nomination, la suspension, ou la révocation des fonctionnaires et employés du Bureau.

Il fixera les traitements et salaires et contrôlera la dépense générale.

La présence de cinq membres dans les réunions dûment convoquées suffit pour permettre au Conseil de délibérer valablement. Les décisions sont prises à la majorité des voix.

Le Conseil communique sans délai aux Puissances Signataires les règlements adoptés par lui. Il leur adresse chaque année un Rapport sur les travaux de la Cour, sur le fonctionnement des services administratifs, et sur les dépenses.

### ARTICLE XXIX.

Les frais du Bureau seront supportés par les Puissances Signataires dans la proportion établie pour le Bureau International de l'Union Postale Universelle.

## Chapitre III.—*De la Procédure Arbitrale.*

### ARTICLE XXX.

En vue de favoriser le développement de l'arbitrage, les Puissances Signataires ont arrêté les règles suivantes, qui seront applicables à la procédure arbitrale, en tant que les Parties ne sont pas convenues d'autres règles.

### ARTICLE XXXI.

Les Puissances qui recourrent à l'arbitrage signent un Acte spécial (Compromis) dans lequel sont nettement déterminés l'objet du litige ainsi que l'étendue des pouvoirs des arbitres. Cet Acte implique l'engagement des Parties de se soumettre de bonne foi à la sentence arbitrale.

### ARTICLE XXXII.

Les fonctions arbitrales peuvent être conférées à un arbitre unique ou à plusieurs arbitres désignés par les Parties à leur gré,

Netherland Minister for Foreign Affairs, who will act as President, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

This Council will be charged with the establishment and organisation of the International Bureau, which will be under its direction and control.

It will notify to the Powers the constitution of the Court and will provide for its installation.

It will settle its Rules of Procedure and all other necessary Regulations.

It will decide all questions of administration which may arise with regard to the operations of the Court.

It will have entire control over the appointment, suspension or dismissal of the officials and employés of the Bureau.

It will fix the payments and salaries, and control the general expenditure.

At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Signatory Powers without delay the Regulations adopted by it. It furnishes them with an annual Report on the labours of the Court, the working of the Administration, and the expenses.

### ARTICLE XXIX.

The expenses of the Bureau shall be borne by the Signatory Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

## Chapter III.—*On Arbitral Procedure.*

### ARTICLE XXX.

With a view to encourage the development of arbitration, the Signatory Powers have agreed on the following Rules, which shall be applicable to arbitral procedure, unless other Rules have been agreed on by the parties.

### ARTICLE XXXI.

The Powers who have recourse to arbitration sign a special Act ("Compromis"), in which the subject of the difference is clearly defined, as well as the extent of the Arbitrators' powers. This Act implies the undertaking of the parties to submit loyally to the Award.

### ARTICLE XXXII.

The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen

ou choisis par elles parmi les membres de la Cour Permanente d'Arbitrage établie par le présent Acte.

A défaut de constitution du Tribunal par l'accord immédiat des Parties, il est procédé de la manière suivante :

Chaque Partie nomme deux arbitres et ceux-ci choisissent ensemble un surarbitre.

En cas de partage des voix, le choix du surarbitre est confié à une Puissance tierce, désignée de commun accord par les Parties.

Si l'accord ne s'établit pas a ce sujet, chaque Partie désigne une Puissance différente et le choix du surarbitre est fait de concert par les Puissances ainsi désignées.

ARTICLE XXXIII.

Lorsqu'un Souverain ou un Chef d'État est choisi pour arbitre, la procédure arbitrale est réglée par lui.

ARTICLE XXXIV.

Le surarbitre est de droit Président du Tribunal.

Lorsque le Tribunal ne comprend pas de surarbitre, il nomme lui-même son Président.

ARTICLE XXXV.

En cas de décès, de démission, ou d'empêchement, pour quelque cause que ce soit, de l'un des arbitres, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE XXXVI.

Le siège du Tribunal est désigné par les Parties. A défaut de cette désignation le Tribunal siège à La Haye.

Le siège ainsi fixé ne peut, sauf le cas de force majeure, être changé par le Tribunal que de l'assentiment des Parties.

ARTICLE XXXVII.

Les Parties ont le droit de nommer auprès du Tribunal des délégués ou agents spéciaux, avec la mission de servir d'intermédiaires entre elles et le Tribunal.

Elles sont en outre autorisées à charger de la défense de leurs droits et intérêts devant le Tribunal, des Conseils ou avocats nommés par elles à cet effet.

ARTICLE XXXVIII.

Le Tribunal décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

ARTICLE XXXIX.

La procédure arbitrale comprend en règle générale deux phases distinctes : l'instruction et les débats.

by them from the members of the Permanent Court of Arbitration established by the present Act.

Failing the constitution of the Tribunal by direct agreement between the parties, the following course shall be pursued :

Each party appoints two Arbitrators, and these latter together choose an Umpire.

In case of equal voting, the choice of the Umpire is entrusted to a third Power, selected by the parties by common accord.

If no agreement is arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

ARTICLE XXXIII.

When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitral procedure is settled by him.

ARTICLE XXXIV.

The Umpire is by right President of the Tribunal.

When the Tribunal does not include an Umpire, it appoints its own President.

ARTICLE XXXV.

In case of the death, retirement, or disability from any cause of one of the Arbitrators, his place shall be filled in accordance with the method of his appointment.

ARTICLE XXXVI.

The Tribunal's place of session is selected by the parties. Failing this selection the Tribunal sits at The Hague.

The place thus fixed cannot, except in case of necessity, be changed by the Tribunal without the assent of the parties.

ARTICLE XXXVII.

The parties have the right to appoint delegates or special agents to attend the Tribunal, for the purpose of serving as intermediaries between them and the Tribunal.

They are further authorised to retain, for the defence of their rights and interests before the Tribunal, counsel or advocates appointed by them for this purpose.

ARTICLE XXXVIII.

The Tribunal decides on the choice of languages to be used by itself, and to be authorised for use before it.

ARTICLE XXXIX.

As a general rule the arbitral procedure comprises two distinct phases : preliminary examination and discussion.

L'instruction consiste dans la communication faite par les agents respectifs, aux membres du Tribunal et à la Partie adverse, de tous actes imprimés ou écrits et de tous documents contenant les moyens invoqués dans la cause. Cette communication aura lieu dans la forme et dans les délais déterminés par le Tribunal en vertu de l'Article XLIX.

Les débats consistent dans le développement oral des moyens des Parties devant le Tribunal.

ARTICLE XL.

Toute pièce produite par l'une des Parties doit être communiquée a l'autre Partie.

ARTICLE XLI.

Les débats sont dirigés par le Président.

Ils ne sont publics qu'en vertu d'une décision du Tribunal, prise avec l'assentiment des Parties.

Ils sont consignés dans des procès-verbaux rédigés par des secrétaires que nomme le Président. Ces procès-verbaux ont seuls caractère authentique.

ARTICLE XLII.

L'instruction étant close, le Tribunal a le droit d'écarter du débat tous actes ou documents nouveaux qu'une des Parties voudrait lui soumettre sans le consentement de l'autre.

ARTICLE XLIII.

Le Tribunal demeure libre de prendre en considération les Actes ou documents nouveaux sur lesquels les Agents ou Conseils des Parties appelleraient son attention.

En ce cas, le Tribunal à le droit de requérir la production de ces actes ou documents, sauf l'obligation d'en donner connaissance à la Partie adverse.

ARTICLE XLIV.

Le Tribunal peut, en outre, requérir des Agents des Parties la production de tous actes et demander toutes explications nécessaires. En cas de refus le Tribunal en prend acte.

ARTICLE XLV.

Les Agents et les Conseils des Parties sont autorisés à présenter oralement au Tribunal tous les moyens qu'ils jugent utiles à la defense de leur cause.

ARTICLE XLVI.

Ils ont le droit de soulever des exceptions et incidents. Les décisions du Tribunal sur ces points sont définitives et ne peuvent donner lieu à aucune discussion ultérieure.

Preliminary examination consists in the communication by the respective agents to the members of the Tribunal and to the opposite party of all printed or written Acts and of all documents containing the arguments invoked in the case. This communication shall be made in the form and within the periods fixed by the Tribunal in accordance with Article XLIX.

Discussion consists in the oral development before the Tribunal of the arguments of the parties.

ARTICLE XL.

Every document produced by one party must be communicated to the other party.

ARTICLE XLI.

The discussions are under the direction of the President.

They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in the *procès-verbaux* drawn up by the Secretaries appointed by the President. These *procès-verbaux*, alone have an authentic character.

ARTICLE XLII.

When the preliminary examination is concluded, the Tribunal has the right to refuse discussion of all fresh Acts or documents which one party may desire to submit to it without the consent of the other party.

ARTICLE XLIII.

The Tribunal is free to take into consideration fresh Acts or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these Acts or documents, but is obliged to make them known to the opposite party.

ARTICLE XLIV.

The Tribunal can, besides, require from the agents of the parties the production of all Acts, and can demand all necessary explanations. In case of refusal, the Tribunal takes note of it.

ARTICLE XLV.

The agents and counsel of the parties are authorised to present orally to the Tribunal all the arguments they may think expedient in defence of their case.

ARTICLE XLVI.

They have the right to raise objections and points.

The decisions of the Tribunal on those points are final, and cannot form the subject of any subsequent discussion.

ARTICLE XLVII.

Les membres du Tribunal ont le droit de poser des questions aux Agents et aux Conseils des Parties et de leur demander des éclaircissements sur les points douteux.

Ni les questions posées, ni les observations faites par les membres du Tribunal pendant le cours des débats ne peuvent être regardées comme l'expression des opinions du Tribunal en général ou de ses membres en particulier.

ARTICLE XLVIII.

Le Tribunal est autorisé à déterminer sa compétence en interprétant le Compromis ainsi que les autres Traités qui peuvent être invoqués dans la matière, et en appliquant les principes du droit international.

ARTICLE XLIX.

Le Tribunal a le droit de rendre des ordonnances de procédure pour la direction du procès, de déterminer les formes et délais dans lesquels chaque Partie devra prendre ses conclusions et de procéder à toutes les formalités que comporte l'administration des preuves.

ARTICLE L.

Les Agents et les Conseils des Parties ayant présenté tous les éclaircissements et preuves à l'appui de leur cause, le Président prononce la clôture des débats.

ARTICLE LI.

Les délibérations du Tribunal ont lieu à huis-clos.

Toute décision est prise à la majorité des membres du Tribunal.

Le refus d'un membre de prendre part au vote doit être constaté dans le procès-verbal.

ARTICLE LII.

La sentence arbitrale, votée à la majorité des voix, est motivée. Elle est rédigée par écrit et signée par chacun des membres du Tribunal.

Ceux des membres qui sont restés en minorité peuvent constater, en signant, leur dissentiment.

ARTICLE LIII.

La sentence arbitrale est lue en séance publique du Tribunal, les Agents et les Conseils des Parties présents ou dûment appelés.

ARTICLE XLVII.

The members of the Tribunal have the right to put questions to the agents and counsel of the parties, and to demand explanations from them on doubtful points.

Neither the questions put nor the remarks made by members of the Tribunal during the discussions can be regarded as an expression of opinion by the Tribunal in general, or by its members in particular.

ARTICLE XLVIII.

The Tribunal is authorised to declare its competence in interpreting the "Compromis" as well as the other Treaties which may be invoked in the case, and in applying the principles of international law.

ARTICLE XLIX.

The Tribunal has the right to issue Rules of Procedure for the conduct of the case, to decide the forms and periods within which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ARTICLE L.

When the agents and counsel of the parties have submitted all explanations and evidence in support of their case, the President pronounces the discussion closed.

ARTICLE LI.

The deliberations of the Tribunal take place in private.

Every decision is taken by a majority of members of the Tribunal.

The refusal of a member to vote must be recorded in the *procès-verbal*.

ARTICLE LII.

The Award, given by a majority of votes, is accompanied by a statement of reasons. It is drawn up in writing and signed by each member of the Tribunal.

Those members who are in the minority may record their dissent when signing.

ARTICLE LIII.

The Award is read out at a public meeting of the Tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

ARTICLE LIV.

La sentence arbitrale, dûment prononcée et notifiée aux agents des Parties en litige, décide définitivement et sans appel la contestation.

ARTICLE LV.

Les Parties peuvent se réserver dans le Compromis de demander la revision de la sentence arbitrale.

Dans ce cas et sauf convention contraire, la demande doit être adressée au Tribunal qui a rendu la sentence. Elle ne peut être motivée que par la découverte d'un fait nouveau qui eût été de nature à exercer une influence décisive sur la sentence et qui, lors de la clôture des débats, était inconnu du Tribunal lui-même et de la Partie qui a demandé la revision.

La procédure de revision ne peut être ouverte que par une décision du Tribunal constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères prévus par le paragraphe précedént et déclarant à ce titre la demande recevable.

Le Compromis détermine le délai dans lequel la demande de revision doit être formée.

ARTICLE LVI.

La sentence arbitrale n'est obligatoire que pour les Parties qui ont conclu le Compromis.

Lorsqu'il s'agit de l'interprétation d'une Convention à laquelle ont participé d'autres Puissances que les Parties en litige, celles ci notifient aux premières le Compromis qu'elles ont conclu. Chacune de ces Puissances a le droit d'intervenir au procès. Si une ou plusieurs d'entre elles ont profité de cette faculté, l'interprétation contenue dans la sentence est également obligataire à leur égard.

ARTICLE LVII.

Chaque Partie supporte ses propres frais et une part égale des frais du Tribunal.

*Dispositions Générales.*

ARTICLE LVIII.

La présente Convention sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puisssances, qui ont été représentées à la Conférence Internationale de la Paix de La Haye.



ARTICLE LIV.

The Award, duly pronounced and notified to the agents of the parties at variance, puts an end to the dispute definitely and without appeal.

ARTICLE LV.

The parties can reserve in the "Compromis" the right to demand the revision of the Award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the Award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the Award, and which, at the time the discussion was closed, was unknown to the Tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognising in it the character described in the foregoing paragraph, and declaring the demand admissible on this ground.

The "Compromis" fixes the period within which the demand for revision must be made.

ARTICLE LVI.

The Award is only binding on the parties who concluded the "Compromis."

When there is a question of interpreting a Convention to which Powers, other than those concerned in the dispute, are parties, the latter notify to the former the "Compromis" they have concluded. Each of these Powers has the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the Award is equally binding on them.

ARTICLE LVII.

Each party pays its own expenses and an equal share of those of the Tribunal.

*General Provisions.*

ARTICLE LVIII.

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès verbal* shall be drawn up recording the receipt of each ratification, and a copy duly certified shall be sent, through the diplomatic channel, to all the Powers who were represented at the International Peace Conference at The Hague.

ARTICLE LIX.

Les Puissances non-Signataires qui ont été représentées à la Conférence Internationale de la Paix pourront adhérer à la présente Convention. Elles auront à cet effet à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

ARTICLE LX.

Les conditions auxquelles les Puissances qui n'ont pas été représentées à la Conférence Internationale de la Paix, pourront adhérer à la présente Convention, formeront l'objet d'une entente ultérieure entre les Puissances Contractantes.

ARTICLE LXI.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs sceaux.

Fait à La Haye, le vingt-neuf juillet mil huit cent quatre-vingt-dix-neuf, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

Pour la Grande-Bretagne et l'Irlande: PAUNCEFOTE, HENRY HOWARD.

Pour l'Allemagne: MÜNSTER DERNEBURG.

Pour l'Autriche-Hongrie: WELSERSHEIMB, OKOLICSANYI.

Pour la Belgique: A. BEERNAERT, Comte DE GRELLE ROGIER, Chevalier DESCAMPS.

Pour la Chine: YANG YÜ.

Pour le Danemark: F. BILLE.

Pour l'Espagne: El Duque DE TETUAN, W. R. DE VILLA URRUTIA, ARTURO DE BAGUER.

Pour les États-Unis d'Amérique: ANDREW D. WHITE, SETH LOW, STANFORD NEWEL, A. T. MAHAN, WILLIAM CROZIER.

Sous réserve de la Déclaration faite dans la séance plénière de la Conférence du 25 Juillet 1899.[1]

ARTICLE LIX.

The non-Signatory Powers who were represented at the International Peace Conference can adhere to the present Convention. For this purpose they must make known their adhesion to the Contracting Powers by a written notification addressed to the Netherland Government, and communicated by it to all the other Contracting Powers.

ARTICLE LX.

The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a subsequent Agreement among the Contracting Powers.

ARTICLE LXI.

In the event of one of the High Contracting Parties denouncing the present Convention, this denunciation would not take effect until a year after its notification made in writing to the Netherland Government, and by it communicated at once to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals to it.

Done at The Hague, the 29th July 1899, in a single copy, which shall remain deposited in the archives of the Netherland Government, and copies of it, duly certified, shall be sent through the diplomatic channel to the Contracting Powers.

[1] *Translation.*—Under reservation of the Declaration made at the plenary sitting of the Conference on the 25th July, 1899, see text of this Declaration, p. 228 note.

Pour les États-Unis Mexicains: A. DE MIER, J. ZENIL.

Pour la France: LÉON BOURGEOIS, G. BIHOURD, D'ESTOURNELLES DE CONSTANT.

Pour le Grèce: N. DELYANNI.

Pour l'Italie: NIGRA, ZANNINI, G. POMPILJ.

Pour le Japon: I. MOTONO.

Pour le Luxembourg: EYSCHEN.

Pour le Monténégro: STAAL.

Pour les Pays-Bas: v. KARNEBEEK, DEN BEER PORTUGAEL, T. M. C. ASSER, E. N. RAHUSEN.

Pour la Perse: MIRZA RIZA KHAN, ARFA-UD-DOVLEH.

Pour la Portugal: Conde DE MACEDO, AGOSTINHO D'ORNELLAS DE VASCONCELLOS, Conde DE SELIR.

Pour la Roumanie: A. BELDIMAN, J. N. PAPINIU.

Sous les réserves formulées aux Articles XVI, XVII, et XIX de la présente Convention (XV, XVI, et XVIII du projet présenté par le Comité d'Examen) et consignées au procès-verbal de la séance de la Troisième Commission du 20 Juillet, 1899.[1]

Pour la Russie: STAAL, MARTENS, A. BASILY.

Pour la Serbie: CHEDO MIYATOVITCH.

Sous les réserves, consignées au procès-verbal de la Troisième Commission du 20 Juillet, 1899.[2]

Pour le Siam: PHYA SURIYA NUVATR, VISUDDHA.

Pour les Royaumes: Unis de Suède et de Norvège: BILDT.

Pour la Suisse: ROTH.

Pour la Turquie: TURKHAN, MEHEMED NOURY.

Sous réserve de la Déclaration faite dans la séance plénière de la Conférence du 25 Juillet, 1899.[3]

Pour la Bulgarie: D. STANCIOFF, Major HESSAPTCHIEFF.

[1] *Translation.*—Under reservations formulated to Articles XVI, XVII, and XIX of the present Convention (XV, XVI, and XVIII of the draft presented by the Committee of Examination) and recorded in the *procès-verbal* of the sitting of the Third Commission of July 20, 1899, see text of these reservations, p. 229, note 1.

[2] *Translation.*—Under reservations recorded in the *procès-verbal* of the Third Commission of July 20, 1899.

[3] *Translation.*—Under reservation of the Declaration made in the plenary sitting of the Conference of July 25, 1899.

The following is an extract from the *procès-verbal* of the sitting referred to above:—

"*Son Excellence Turkhan Pacha* fait la déclaration suivante:—

"'La Délégation Ottomane, considérant que ce travail de la Conférence a été une œuvre de haute loyauté et d'humanité destinée uniquement à raffermir la paix générale en sauvegardant les intérêts et les droits de chacun, déclare au nom de son Gouvernement adhérer à l'ensemble du projet qui vient d'être adopté, aux conditions suivantes:

"'1. Il est formellement entendu que le recours aux bons offices, à la médiation, aux Commissions d'Enquête et à l'arbitrage est purement facultatif et ne saurait en aucun cas revêtir un caractère obligatoire ou dégénérer en intervention.

"'2. Le Gouvernement Impérial aura à juger lui-même des cas où ses intérêts lui permettraient d'admettre ces moyens, sans que son abstention ou son refus d'y avoir recours puissent être considérés par les États Signataires comme un procédé peu amical.

"'Il va de soi qu'en aucun cas les moyens dont il s'agit ne sauraient s'appliquer à des questions d'ordre intérieur.'

"Acte est donné à son Excellence Turkhan Pacha de sa déclaration."

## FORMS OF RATIFICATION

The form adopted, except by the United States, Servia, and Roumania, for the ratification of the above was as follows :—

Le premier Soussigné déclare avoir remis et le second Soussigné déclare avoir reçu, pour être déposé dans les archives d'État du Royaume des Pays-Bas, l'Acte de (name of the State in question), portant la ratification de la *Convention pour le Réglement Pacifique des Conflits Internationaux.*

En foi de quoi, les Soussignés ont dressé le présent procès-verbal en un seul exemplaire dont une copie, certifiée conforme, sera transmise par la voie diplomatique à toutes les Puissances qui ont été représentées à la Conférence Internationale de la Paix de La Haye.

Fait en cette ville, le, etc.

L'Envoyé Extraordinaire et Ministre
Plénipotentiaire de, etc.
Le Ministre des Affaires Étrangères de
Sa Majesté la Reine des Pays-Bas, etc.

Certifié pour copie conforme :
Le Secrétaire-Général
du Département des Affaires Étrangères.

The United States ratification was as follows :—

Le premier Soussigné déclare avoir remis et le second Soussigné déclare avoir recu, pour être déposé dans les archives d'État du Royaume des Pays-Bas, l'Acte des États-Unis d'Amérique, portant la ratification de la *Convention pour le Réglement Pacifique des Conflits Internationaux*, sous réserve de la Déclaration faite dans la séance plénière de la Conférence du 25 Juillet, 1899.[1]

En foi de quoi, les Soussignés ont dressé le présent procès-verbal en un seul exemplaire dont une copie, certifiée conforme, sera transmise par la voie diplomatique à toutes les Puissances qui ont été représentées à la Conférence Internationale de la Paix de La Haye.

Fait en cette ville, le 4 Septembre, 1900.

L'Envoyé Extraordinaire et Ministre
Plénipotentiaire des États-Unis d'Amérique,
STANFORD NEWEL.
Le Ministre des Affaires Etrangères de
Sa Majesté la Reine des Pays-Bas,
W. H. DE BEAUFORT.

Certifié pour copie conforme :
Le Secrétaire-Général
du Département des Affaires Étrangères,
L. H. RUYSSENAERS.

[1] The following is an extract from the *procès-verbal* of the sitting above referred to :—

"La Délégation des États-Unis d'Amérique, en signant la *Convention pour le Réglement Pacifique des Conflits Internationaux* telle qu'elle est proposée par la Conférence Internationale de la Paix, fait la déclaration suivante :—

"Rien de ce qui est contenu dans cette Convention ne peut être interprété de façon à obliger les États-Unis d'Amérique à se départir de leur politique traditionnelle, en vertu de laquelle ils s'abstiennent d'intervenir, de s'ingérer, ou de s'immiscer dans les questions politiques ou dans la politique ou dans l'administration intérieure d'aucun État étranger. Il est bien entendu également que rien dans la Convention ne pourra être interprété comme impliquant un abandon par les États-Unis d'Amérique de leur attitude traditionnelle à l'égard des questions purement Américaines."

The Roumanian ratification was as follows:—

Le premier Soussigné déclare avoir remis et le second Soussigné déclare avoir reçu, pour être déposé dans les archives d'État du Royaume des Pays-Bas, l'Acte de la Roumanie, portant la ratification de la *Convention pour le Réglement Pacifique des Conflits Internationaux*, sous les réserves, formulées aux Articles XVI, XVII, et XIX de la dite Convention (XV, XVI, et XVIII du projet présenté par le Comité d'Examen) et consignées au procès-verbal de la séance de la Troisième Commission du 20 Juillet, 1899.[1]

En foi de quoi, les Soussignés ont dressé le présent procès-verbal en un seul exemplaire dont une copie, certifiée conforme, sera transmise par la voie diplomatique à toutes les Puissances qui ont été représentées à la Conférence Internationale de la Paix de La Haye.

Fait en cette ville, le 4 Septembre, 1900.

L'Envoyé Extraordinaire et Ministre
Plénipotentiaire de Sa Majesté le Roi de Roumanie,
J. N. PAPINIU.

Le Ministre des Affaires Étrangères de
Sa Majesté la Reine des Pays-Bas,
W. H. DE BEAUFORT.

Certifié pour copie conforme:
Le Secrétaire-Général
du Département des Affaires Étrangères,
L. H. RUYSSENAERS.

The Servian ratification was as follows:—

Le premier Soussigné déclare avoir remis et le second Soussigné déclare avoir reçu, pour être déposé dans les archives d'État du Royaume des Pays-Bas, l'Acte de Serbie, portant la ratification de la *Convention pour le Réglement Pacifique des Conflits Internationaux*, sous les réserves consignées au procès-verbal de la troisième Commission du 20 Juillet, 1899.[2]

En foi de quoi, les Soussignés ont dressé le présent procès-verbal en un seul exemplaire dont une copie, certifiée conforme, sera transmise par la voie diplomatique à toutes les Puissances qui ont été représentées à la Conférence Internationale de la Paix de La Haye.

Fait en cette ville, le 11 Mai, 1901.

L'Envoyé Extraordinaire et Ministre
Plénipotentiaire de Sa Majesté le Roi de Serbie,
S. M. LOSANITCH.

Le Ministre des Affaires Étrangères de
Sa Majesté la Reine des Pays-Bas,
W. H. DE BEAUFORT.

Certifié pour copie conforme:
Le Secrétaire-Général
du Département des Affaires Etrangères,
L. H. RUYSSENAERS.

[1] The following is an extract from the *procès-verbal* above referred to:—

"M. Beldiman est chargé par son Gouvernement de faire la Déclaration suivante:—

"'Le Gouvernement Royal de Roumanie, complètement acquis au principe de l'arbitrage facultatif, dont il apprécie toute l'importance dans les relations internationales, n'entend cependant pas prendre, par l'Article XV, un engagement d'accepter un arbitrage dans tous les cas qui y sont prévus, et il croit devoir formuler des réserves expresses à cet égard.

"'Il ne peut donc voter cet Article que sous cette réserve.'

"Acte est donné au Délégué de Roumanie de sa Déclaration.

"A propos de l'Article XVI, M. Beldiman fait observer que son Gouvernement ne peut y adhérer que s'il est entendu qu'il ne se rapporte pas aux conflits qui seraient déjà nés avant l'adoption de ce projet. Il lit à ce sujet la Déclaration suivante:—

"'Le Gouvernement Royal de Roumanie déclare qu'il ne peut adhérer à l'Article XVI qu'avec la réserve expresse, consignée au procès-verbal, qu'il est décidé à ne pas accepter, en aucun cas, un arbitrage international, pour des contestations ou litiges antérieurs à la conclusion de la présente Convention.'

"Acte est donné au Délégué de Roumanie de cette Déclaration.

"M. Beldiman ne peut adhérer à l'Article XVIII que sous la réserve exprimée dans la Déclaration suivante:—

"'Le Gouvernement Royal de Roumanie déclare qu'en adhérant à l'Article XVIII de la Convention, il n'entend prendre aucun engagement en matière d'arbitrage obligatoire.'"

[2] The following is an extract from the *procès-verbal* above referred to:—

"M Myatovitch donne lecture de la Déclaration suivante au nom du Gouvernement Royal de Serbie:—

"'Au nom du Gouvernement Royal de Serbie, nous avons l'honneur de déclarer que l'adoption par nous du principe de bons offices et de la médiation n'implique pas une reconnaissance du droit pour les Etats tiers d'user de ces moyens autrement qu'avec la réserve extrême qu'exige la nature délicate de ces démarches.

"'Nous n'admettrons les bons offices et la médiation qu'à condition de leur conserver pleinement et intégralement leur caractère de conseil purement amical et nous ne saurions jamais les accepter dans des formes et des circonstances telles qu'elles pourraient leur imprimer le caractère d'une intervention.'

"Acte est donné au Délégué de Serbie de sa Déclaration."

# (*b*) INTERNATIONAL CONVENTION WITH RESPECT TO THE LAWS AND CUSTOMS OF WAR BY LAND

*Signed at the Hague, July* 29, 1899

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes; Sa Majesté l'Empereur d'Allemagne, Roi de Prusse; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie; Sa Majesté le Roi des Belges; Sa Majesté le Roi de Danemark, Sa Majesté le Roi d'Espagne, et, en son nom, Sa Majesté la Reine-Régente du Royaume; le Président des États-Unis d'Amérique; le Président des États-Unis Mexicains; le Président de la République Francaise; Sa Majesté le Roi des Hellènes; Sa Majesté le Roi d'Italie; Sa Majesté l'Empereur du Japon; Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau; Son Altesse le Prince de Monténégro; Sa Majesté la Reine des Pays-Bas; Sa Majesté Impériale le Schah de Perse; Sa Majesté le Roi du Portugal et des Algarves, &c.; Sa Majesté le Roi de Roumanie; Sa Majesté l'Empereur de Toutes les Russies; Sa Majesté le Roi de Serbie; Sa Majesté le Roi de Siam; Sa Majesté le Roi de Suède et de Norvège; Sa Majestè l'Empereur des Ottomans; et son Altesse Royale le Prince de Bulgarie;

Considérant que, tout en recherchant les moyens de sauvegarder la paix et de prévenir les conflits armés entre les nations, il importe de se préoccuper également du cas où l'appel aux armes serait amené par des événements que leur sollicitude n'aurait pu détourner;

Animés du désir de servir encore, dans cette hypothèse extrême, les intérêts de l'humanité et les exigences toujours progressives de la civilisation;

Estimant qu'il importe, à cette fin, de reviser les lois et coutumes générales de la guerre, soit dans le but de les définir avec plus de précision, soit afin d'y tracer certaines limites destinées à en restreindre autant que possible les rigueurs;

S'inspirant de ces vues recommandées aujourd'hui, comme il y a vingt-cinq ans, lors de la Conférence de Bruxelles de 1874, par une sage et généreuse prévoyance;

Ont, dans cet esprit, adopté un grand nombre de dispositions qui ont pour objet de définir et de régler les usages de la guerre sur terre;

(*Official translation.*)

Her Majesty the Queen, &c., &c.

Considering that, while seeking means to preserve peace and prevent armed conflicts among nations, it is likewise necessary to have regard to cases where an appeal to arms may be caused by events which their solicitude could not avert;

Animated by the desire to serve, even in this extreme hypothesis, the interests of humanity and the ever-increasing requirements of civilisation;

Thinking it important, with this object, to revise the laws and general customs of war, either with the view of defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible;

Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous foresight;

Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land;

Selon les vues des Hautes Parties Contractantes, ces dispositions, dont la rédaction a été inspirée par le désir de diminuer les maux de la guerre, autant que les nécessités militaires le permettent, sont destinées à servir de règle générale de conduite aux belligérants, dans leurs rapports entre eux et avec les populations ;

Il n'a pas été possible toutefois de concerter dès maintenant des stipulations s'étendant à toutes les circonstances qui se présentent dans la pratique ;

D'autre part, il ne pouvait entrer dans les intentions des Hautes Parties Contractantes que les cas non prévus fussent, faute de stipulation écrite, laissés à l'appréciation arbitraire de ceux qui dirigent les armées ;

En attendant qu'un code plus complet des lois de la guerre puisse être édicté, les Hautes Parties Contractantes jugent opportun de constater que, dans les cas non compris dans les dispositions réglementaires adoptées par elles, les populations et les belligérants restent sous la sauvegarde et sous l'empire des principes du droit des gens, tels qu'ils résultent des usages établis entre nations civilisées, des lois de l'humanité, et des exigences de la conscience publique.

Elles déclarent que c'est dans ce sens que doivent s'entendre notamment les Articles 1 et 2 du Règlement adopté.

Les Hautes Parties Contractantes, désirant conclure une Convention à cet effet, ont nommé pour leurs Plénipotentiaires, savoir :

In the view of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war so far as military necessities permit, are destined to serve as general rules of conduct for belligerents in their relations with each other and with populations ;

It has not, however, been possible to agree forthwith on provisions embracing all the circumstances which occur in practice ;

On the other hand, it could not be intended by the High Contracting Parties that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military Commanders ;

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilised nations, from the laws of humanity, and the requirements of the public conscience ;

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood ;

The High Contracting Parties, desiring to conclude a Convention to this effect, have appointed as their Plenipotentiaries : &c., &c.

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, son Excellence le Très Honorable Baron Pauncefote de Preston, Membre du Conseil Privé de Sa Majesté, son Ambassadeur Extraordinaire et Plénipotentiaire à Washington ; Sir Henry Howard, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, son Excellence le Comte de Münster, Prince de Derneburg, son Ambassadeur à Paris ;

Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie, son Excellence le Cómte R. de Welsersheimb, son Ambassadeur Extraordinaire et Plénipotentiare ; M. Alexandre Okolicsanyi d'Okolicsna, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté le Roi des Belges, son Excellence M. Auguste Beernaert, son Ministre d'État, Président de la Chambre des Représentants ; M. le Comte Degrelle Rogier, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ; M. le Chevalier Descamps, Sénateur ;

Sa Majesté le Roi de Danemark, son Chambellan Fr. E. de Bille, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Londres ;

Sa Majesté le Roi d'Espagne, et, en son nom, Sa Majesté la Reine-Régente du Royaume, son Excellence le Duc de Tetuan, Ancien Ministre des Affaires Étrangères ; M. W. Ramirez de Villa Urrutia, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Bruxelles ; M. Arturo de Baguer, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Le Président des États-Unis d'Amérique, M. Stanford Newel, Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Le Président des États-Unis Mexicains, M. de Mier, Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ; M. Zenil, Ministre-Résident à Bruxelles ;

Le Président de la République Française, M. Léon Bourgeois, Ancien Président du Conseil, Ancien Ministre des Affaires Étrangères, Membre de la Chambre des Députés ; M. Georges Bihourd, Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ; M. le Baron d'Estournelles de Constant, Ministre Plénipotentiaire, Membre de la Chambre des Députés ;

Sa Majesté le Roi des Hellènes, M. N. Delyanni, Ancien Président du Conseil, Ancien Ministre des Affaires Étrangères, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ;

Sa Majesté le Roi d'Italie, son Excellence le Comte Nigra, son Ambassadeur à Vienne, Sénateur du Royaume ; M. le Comte A. Zannini, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ; M. le Commandeur Guido Pompilj, Député au Parlement Italien ;

Sa Majesté l'Empereur du Japon, M. I. Motono, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Bruxelles ;

Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau, son Excellence M. Eyschen, son Ministre d'État, Président du Gouvernement Grand-Ducal ;

Son Altesse le Prince de Monténégro, son Excellence M. le Conseiller Privé Actuel de Staal, Ambassadeur de Russie à Londres ;

Sa Majesté la Reine des Pays-Bas, M. le Jonkheer A. P. C. van Karnebeek, Ancien Ministre des Affaires Étrangères, Membre de la Seconde Chambre des États-Généraux ; M. le Général J. C. C. den Beer Poortugael, Ancien Ministre de la Guerre, Membre du Conseil d'État ; M. T. M. C. Asser ; Membre du Conseil d'État ; M. E. N. Rahusen, Membre de la Première Chambre des États-Généraux ;

Sa Majesté Impériale le Schah de Perse, son Aide-de-camp, Général Mirza Riza Khan, Arfa-ud-Dovleh, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg et à Stockholm ;

Sa Majesté le Roi de Portugal et des Algarves, &c., M. le Comte de Macedo, Pair du Royaume, Ancien Ministre de la Marine et des Colonies, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Madrid ; M. d'Ornellas et Vasconcellos, Pair du Royaume, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg ; M. le Comte de Selir, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté le Roi de Roumanie, M. Alexandre Beldiman, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Berlin ; M. Jean N. Papinu, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté l'Empereur de Toutes les Russies, son Excellence M. le Conseiller Privé Actuel de Staal, son Ambassadeur à Londres ; M. de Martens, Membre Permanent du Conseil du Ministère Impérial des Affaires Étrangères, son Conseiller Privé ; son Conseiller d'État Actuel de Basily, Chambellan, Directeur du Premier Département du Ministère Impérial des Affaires Étrangères ;

Sa Majesté le Roi de Serbie, M. Miyatovitch, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Londres et à La Haye ;

Sa Majesté le Roi de Siam, M. Phya Suriya Nuvatr, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg et à Paris ; M. Phya Visuddha Suriyasakti, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye et à Londres ;

Sa Majesté le Roi de Suède et de Norvège, M. le Baron de Bildt, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Rome ;

Sa Majesté l'Empereur des Ottomans, son Excellence Turkhan Pacha, Ancien Ministre des Affaires Étrangères, Membre de son Conseil d'État ; Noury Bey, Secrétaire-Général au Ministère des Affaires Étrangères ;

Son Altesse Royale le Prince de Bulgarie, M. le Dr. Dimitri Stancioff, Agent Diplomatique à Saint-Pétersbourg ; M. le Major Christo Hessaptchieff, Attaché Militaire à Belgrade ;

Lesquels, aprés s'être communiqué leurs pleins pouvoirs, trouvès en bonne et due forme, sont convenues de ce qui suit :—

ARTICLE I.

Les Hautes Parties Contractantes donneront à leurs forces armées de terre des instructions qui seront conformes au " Règlement concernant les Lois et Coutumes de la Guerre sur Terre," annexé à la présente Convention.

ARTICLE II.

Les dispositions contenues dans le Règlement visé a l'Article I ne sont obligatoires que pour les Puissances Contractantes en cas de guerre entre deux ou plusieurs d'entre elles.

Ces dispositions cesseront d'être obligatoires du moment où,

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions :

ARTICLE I.

The High Contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the " Regulations respecting the Laws and Customs of War on Land " annexed to the present Convention.

ARTICLE II.

The provisions contained in the Regulations mentioned in Article I are

dans une guerre entre des Puissances Contractantes, une Puissance non contractante se joindrait à l'un des belligérants.

ARTICLE III.

La présente Convention sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

ARTICLE IV.

Les Puissances non Signataires sont admises à adhérér à la présente Convention.

Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas, et communiquée par celui-ci à toutes les autres Puissances Contractantes.

ARTICLE V.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas, et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à La Haye, le vingt-neuf Juillet, mil huit cent quatre-vingt-dix-neuf, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

(Signatures).[1]

Annexe.

RÈGLEMENT CONCERNANT LES LOIS ET COUTUMES DE LA GUERRE SUR TERRE.

SECTION I.—*Des Belligérants.*

Chapitre I.—*De la Qualité de Belligérant.*

Article 1. Les lois, les droits, et les devoirs de la guerre ne s'appliquent pas seulement à l'armée, mais encore aux milices et aux corps de volontaires réunissant les conditions suivantes :—

only binding on the Contracting Powers, in case of war between two or more of them.

These provisions shall cease to be binding from the time when, in a war between Contracting Powers, a non-Contracting Power joins one of the belligerents.

ARTICLE III.

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at the Hague.

A *procés-verbal* shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent through the diplomatic channel, to all the Contracting Powers.

ARTICLE IV.

Non-Signatory Powers are allowed to accede to the present Convention.

For this purpose they must make their accession known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

ARTICLE V.

In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherland Government, and by it at once communicated to all the other Contracting Powers.

This denunciation shall affect only the notifying Power.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals thereto.

Done at the Hague, the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be delivered to the Contracting Powers through the diplomatic channel.

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

SECTION I.—*On Belligerents.*

CHAPTER I.—*On the Qualifications of Belligerents.*

ARTICLE 1. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps, fulfilling the following conditions :—

[1] Same as at pp. 14, 15.

1. D'avoir à leur tête une personne responsable pour ses subordonnés ;

2. D'avoir un signe distinctif, fixe, et reconnaissable à distance ;

3. De porter les armes ouvertement ; et

4. De se conformer dans leurs opérations aux lois et coutumes de la guerre.

Dans les pays ou les milices ou des corps de volontaires constituent l'armée ou en font partie, ils sont compris sous la dénomination "d'armée."

Art. 2. La population d'un territoire non occupé qui, à l'approche de l'ennemi, prend spontanément les armes pour combattre les troupes d'invasion sans avoir eu le temps de s'organiser conformément à l'Article 1, sera considérée comme belligérante si elle respecte les lois et coutumes de la guerre.

Art. 3. Les forces armées des parties belligérantes peuvent se composer de combattants et de non-combattants. En cas de capture par l'ennemi, les uns et les autres ont droit au traitement des prisonniers de guerre.

## Chapitre II.—*Des Prisonniers de Guerre.*

Art. 4. Des prisonniers de guerre sont au pouvoir du Gouvernement ennemi, mais non des individus ou des corps qui les ont capturés.

Ils doivent être traités avec humanité.

Tout ce qui leur appartient personnellement, excepté les armes, les chevaux, et les papiers militaires, reste leur propriété.

Art. 5. Les prisonniers de guerre peuvent être assujettis à l'internement dans une ville, forteresse, camp, ou localité quelconque, avec obligation de ne pas s'en éloigner au delà de certaines limites déterminées ; mais ils ne peuvent être enfermé que par mesure de sûreté indispensable.

Art. 6. L'Etat peut employer, comme travailleurs, les prisonniers de guerre, selon leur grade et leurs aptitudes. Ces travaux ne seront pas excessifs, et n'auront aucun rapport avec les opérations de la guerre.

Les prisonniers peuvent être autorisées à travailler pour le compte d'Administrations publiques ou de particuliers, ou pour leur propre compte.

Les travaux faits pour l'État sont payés d'après les tarifs en vigueur pour les militaires de l'armée nationale exécutant les mêmes travaux.

Lorsque les travaux ont lieu pour le compte d'autres Administrations publiques, ou pour des particuliers, les conditions en sont réglées d'accord avec l'autorité militaire.

Le salaire des prisonniers contribuera à adoucir leur position,

1. To be commanded by a person responsible for his subordinates ;

2. To have a fixed distinctive emblem recognisable at a distance ;

3. To carry arms openly ; and

4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

Art. 2. The population of a territory which has not been occupied who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organise themselves in accordance with Article I, shall be regarded as belligerent, if they respect the laws and customs of war.

Art. 3. The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy both have a right to be treated as prisoners of war.

## Chapter II.—*On Prisoners of War.*

Art. 4. Prisoners of War are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

Art. 5. Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits ; but they can only be confined as an indispensable measure of safety.

Art. 6. The State may utilize the labour of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorised to work for the Public Service, for private persons, or on their own account.

Work done for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks.

When the work is for other branches of the Public Service or for private persons, the conditions shall be settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and

et le surplus leur sera compté au moment de leur libération, sauf défalcation des frais d'entretien.

Art. 7. Le Gouvernement au pouvoir duquel se trouvent les prisonniers de guerre est chargé de leur entretien.

A défaut d'une entente spéciale entre les belligérants, les prisonniers de guerre seront traités, pour la nourriture, le couchage, et l'habillement, sur le même pied que les troupes du Gouvernement qui les aura capturés.

Art. 8. Les prisonniers de guerre seront soumis aux lois, règlements, et ordres en vigueur dans l'armée de l'Etat au pouvoir duquel ils se trouvent. Tout acte d'insubordination autorise, à leur égard, les mesures de rigueur nécessaires.

Les prisonniers évadés, qui seraient repris avant d'avoir pu rejoindre leur armée, ou avant de quitter le territoire occupé par l'armée qui les aura capturés, sont passibles de peines disciplinaires.

Les prisonniers qui, après avoir réussi à s'évader, sont de nouveau faits prisonniers, ne sont passibles d'aucune peine pour la fuite antérieure.

Art. 9. Chaque prisonnier de guerre est tenu de déclarer, s'il est interrogé à ce sujet, ses véritables noms et grade, et, dans le cas où il enfreindrait cette règle, il s'exposerait à une restriction des avantages accordés aux prisonniers de guerre de sa catégorie.

Art. 10. Les prisonniers de guerre peuvent être mis en liberté sur parole, si les lois de leur pays les y autorisent, et, en pareil cas, ils sont obligés, sous la garantie de leur honneur personnel, de remplir scrupuleusement, tant vis-à-vis de leur propre Gouvernement que vis-à-vis de celui qui les a faits prisonniers, les engagements qu'ils auraient contractés.

Dans le même cas, leur propre Gouvernement est tenu de n'exiger ni accepter d'eux aucun service contraire à la parole donnée.

Art. 11. Un prisonnier de guerre ne peut être contraint d'accepter sa liberté sur parole; de même le Gouvernement ennemi n'est pas obligé d'accéder à la demande du prisonnier réclamant sa mise en liberté sur parole.

Art. 12. Tout prisonnier de guerre, libéré sur parole, et repris portant les armes contre le Gouvernement envers lequel il s'était engagé d'honneur, ou contre les alliés de celui-ci, perd le droit au traitement des prisonniers de guerre, et peut être traduit devant les Tribunaux.

Art. 13. Les individus qui suivent une armée sans en faire directement partie, tels que les correspondants et les reporters de journaux, les vivandiers, les fournisseurs, qui tombent au pouvoir de l'ennemi, et que celui-ci juge utile de détenir, ont droit au traitement des prisonniers de guerre, à condition qu'ils soient munis d'une légitimation de l'autorité militaire de l'armée qu'ils accompagnaient.

the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

Art. 7. The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated, as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

Art. 8. Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

Art. 9. Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

Art. 10. Prisoners of war may be set at liberty on parole if the laws of their country authorise it, and, in such a case, they are bound, on their personal honour, scrupulously to fulfil, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given.

Art. 11. A prisoner of war cannot be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

Art. 12. Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honour, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts.

Art. 13. Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

Art. 14. Il est constitué, dès le début des hostilités, dans chacun des Etats belligérants, et le cas échéant, dans les pays neutres qui auront recueilli des belligérants sur leur territoire, un bureau de renseignements sur les prisonniers de guerre. Ce bureau, chargé de répondre à toutes les demandes qui les concernent, reçoit des divers services compétents toutes les indications nécessaires pour lui permettre d'établir une fiche individuelle pour chaque prisonnier de guerre. Il est tenu au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès.

Le bureau de renseignements est également chargé de recueillir et de centraliser tous les objets d'un usage personnel, valeurs, lettres, &c., qui seront trouvés sur les champs de bataille ou délaissés par des prisonniers décédés dans les hôpitaux et ambulances, et de les transmettre aux intéressés.

Art. 15. Les Sociétés de Secours pour les prisonniers de guerre, régulièrement constituées selon la loi de leur pays, et ayant pour objet d'être les intermédiaires de l'action charitable, recevront, de la part des belligérants, pour elles et pour leurs agents dûment accrédités, toute facilité, dans les limites tracées par les nécessités militaires et les règles administratives, pour accomplir efficacement leur tâche d'humanité. Les délégués de ces Sociétés pourront être admis à distribuer des secours dans les dépôts d'internement, ainsi qu'aux lieux d'étape des prisonniers rapatriés, moyennant une permission personnelle délivrée par l'autorité militaire, et en prenant l'engagement par écrit de se soumettre à toutes les mesures d'ordre et de police que celle-ci prescrirait.

Art. 16. Les bureaux de renseignements jouissent de la franchise de port. Les lettres, mandats, et articles d'argent, ainsi que les colis postaux destinés aux prisonniers de guerre ou expédiés par eux, seront affranchis de toutes taxes postales, aussi bien dans les pays d'origine et de destination que dans les pays intermédiaires.

Les dons et secours en nature destinés aux prisonniers de guerre seront admis en franchise de tous droits d'entrée et autres, ainsi que des taxes de transport sur les chemins de fer exploités par l'Etat.

Art. 17. Les officiers prisonniers pourront recevoir le complément, s'il y a lieu, de la solde qui leur est attribuée dans cette situation par les règlements de leur pays, à charge de remboursement par leur Gouvernement.

Art. 18. Toute latitude est laissée aux prisonniers de guerre pour l'exercice de leur religion, y compris l'assistance aux offices de leur culte, à la seule condition de se conformer aux mesures d'ordre et de police prescrites par l'autorité militaire.

Art. 19. Les testaments de prisonniers de guerre sont reçus ou dressés dans les mêmes conditions que pour les militaires de l'armée nationale.

Art. 14. A Bureau for information relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the necessary information to enable it to keep an individual return for each prisoner of war. It is kept informed of internments and changes, as well as of admissions into hospital and deaths.

It is also the duty of the Information Bureau to receive and collect all objects of personal use, valuables, letters, &c., found on the battlefields or left by prisoners who have died in hospital or ambulance, and to transmit them to those interested.

Art. 15. Relief Societies for prisoners of war, which are regularly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, shall receive from the belligerents for themselves and their duly accredited agents every facility, within the bounds of military requirements and Administrative Regulations, for the effective accomplishment of their humane task. Delegates of these Societies may be admitted to the places of internment for the distribution of relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all their Regulations for order and police.

Art. 16. The Information Bureau shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or despatched by them, shall be free of all postal duties, both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by the Government railways.

Art. 17. Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government.

Art. 18. Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.

Art. 19. The wills of prisoners of war are received or drawn up on the same conditions as for soldiers of the national army.

On suivra également les mêmes règles en ce qui concerne les pièces relatives à la constatation des décès, ainsi que pour l'inhumation des prisonniers de guerre, en tenant compte de leur grade et de leur rang.

Art. 20. Après la conclusion de la paix, le rapatriement des prisonniers de guerre s'effectuera dans le plus bref délai possible.

### Chapitre III.—*Des Malades et des Blessés.*

Art. 21. Les obligations des belligérants concernant le service des malades et des blessés sont régies par la Convention de Genève du 22 Août, 1864, sauf les modifications dont celle-ci pourra être l'objet.[1]

## Section II.—*Des Hostilités.*

### Chapitre I.—*Des Moyens de Nuire à l'Ennemi, des Sièges, et des Bombardements.*

Art. 22. Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi.

Art. 23. Outre les prohibitions établies par des Conventions spéciales, il est notamment interdit—

(*a.*) D'employer du poison ou des armes empoisonnées ;

(*b.*) De tuer ou de blesser par trahison des individus appartenant à la nation ou à l'armée ennemie ;

(*c.*) De tuer ou de blesser un ennemi qui, ayant mis bas les armes, ou n'ayant plus les moyens de se défendre, s'est rendu à discrétion ;

(*d.*) De déclarer qu'il ne sera pas fait de quartier ;

(*e.*) D'employer des armes, des projectiles, ou des matières propres à causer des maux superflus ;

(*f.*) D'user indûment du pavillon parlementaire, du pavillon national, ou des insignes militaires et de l'uniforme de l'ennemi, ainsi que des signes distinctifs de la Convention de Genève ;

(*g.*) De détruire ou de saisir des propriétés ennemis, sauf les cas où ces destructions ou ces saisies seraient impérieusement commandées par les nécessités de la guerre.

Art. 24. Les ruses de guerre et l'emploi de moyens nécessaires pour se procurer des renseignements sur l'ennemi et sur le terrain sont considérés comme licites.

Art. 25. Il est interdit d'attaquer ou de bombarder des villes, villages, habitations, ou bâtiments qui ne sont pas défendus.

Art. 26. Le Commandant des troupes assaillantes, avant d'entreprendre le bombardement, et sauf le cas d'attaque de vive force, devra faire tout ce qui dépend de lui pour en avertir le autorités.

Art. 27. Dans les sièges et bombardements, toutes les mesures

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

Art. 20. After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.

### Chapter III.—*On the Sick and Wounded.*

Art. 21. The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of the 22nd August, 1864, subject to any modifications which may be introduced into it.

## Section II.—*On Hostilities.*

### Chapter I.—*On means of injuring the Enemy, Sieges, and Bombardments.*

Art. 22. The right of belligerents to adopt means of injuring the enemy is not unlimited.

Art. 23. Besides the prohibitions provided by special Conventions, it is especially prohibited :—

(*a.*) To employ poison or poisoned arms ;

(*b.*) To kill or wound treacherously individuals belonging to the hostile nation or army ;

(*c.*) To kill or wound an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion ;

(*d.*) To declare that no quarter will be given ;

(*e.*) To employ arms, projectiles, or material of a nature to cause superfluous injury ;

(*f.*) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention ;

(*g.*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

Art. 24. Ruses of war and the employment of methods necessary to obtain information about the enemy and the country, are considered allowable.

Art. 25. The attack or bombardment of towns, villages, habitations, or buildings which are not defended, is prohibited.

Art. 26. The Commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

Art. 27. In sieges and bombardments all necessary steps should be taken

[1] See the text of the revised Geneva Convention, p. 261.

nécessaires doivent être prises pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance les hôpitaux, et les lieux de rassemblement de malades et de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

Le devoir des assiégés est de désigner ces édifices au lieu de rassemblement par des signes visibles spéciaux qui seront notifiés d'avance à l'assiégeant.

Art. 28. Il est interdit de livrer au pillage même une ville ou localité prise d'assaut.

## Chapitre II.—*Des Espions.*

Art. 29. Ne peut être considéré comme espion que l'individu qui, agissant clandestinement, ou sous de faux prétextes, recueille, ou cherche à recueillir, des informations dans la zone d'opérations d'un belligérant, avec l'intention de les communiquer à la partie adverse.

Ainsi les militaires non déguisés qui ont pénétré dans la zone d'opérations de l'armée ennemie, à l'effet de recueillir des informations, ne sont pas considérés comme espions. De même, ne sont pas considérés comme espions : les militaires et les non-militaires, accomplissant ouvertement leur mission, chargés de transmettre des dépêches destinées soit à leur propre armée, soit à l'armée ennemie. A cette catégorie appartiennent également les individus envoyés en ballon pour transmettre les dépêches, et, en général, pour entretenir les communications entre les diverses parties d'une armée ou d'un territoire.

Art. 30. L'espion pris sur le fait ne pourra être puni sans jugement préalable.

Art. 31. L'espion qui, ayant rejoint l'armée à laquelle il appartient, est capturé plus tard par l'ennemi, est traité comme prisonnier de guerre, et n'encourt aucune responsabilité pour ses actes d'espionnage antérieurs.

## Chapitre III.—*Des Parlementaires.*

Art. 32. Est considéré comme parlementaire l'individu autorisé par l'un des belligérants à entrer en pourparlers avec l'autre et se présentant avec le drapeau blanc. Il a droit à l'inviolabilité, ainsi que le trompette, clarion, on tambour, le porte-drapeau, et l'interprète qui l'accompagneraient.

Art. 33. Le Chef auquel un parlementaire est expédié n'est pas obligé de le recevoir en toutes circonstances.

Il peut prendre toutes les mesures nécessaires afin d'empêcher le parlementaire de profiter de sa mission pour se renseigner.

Il a le droit, en cas d'abus, de retenir temporairement le parlementaire.

to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

Art. 28. The pillage of a town or place, even when taken by assault, is prohibited.

## Chapter II.—*On Spies.*

Art. 29. An individual can only be considered a spy if, acting clandestinely, or on false pretences, he obtains, or seeks to obtain, information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches, and generally to maintain communication between the various parts of an army or a territory.

Art. 30. A spy taken in the act cannot be punished without previous trial.

Art. 31. A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

## Chapter III.—*On Flags of Truce.*

Art. 32. An individual is considered as bearing a flag of truce who is authorised by one of the belligerents to enter into communication with the other, and who carries a white flag. He has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter who may accompany him.

Art. 33. The Chief to whom a flag of truce is sent is not obliged to receive it in all circumstances.

He can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

Art. 34. Le parlementaire perd ses droits d'inviolabilité s'il est prouvé, d'une manière positive et irrécusable, qu'il a profité de sa position privilégiée pour provquer ou commettre un acte de trahison.

Chapitre IV.—*Des Capitulations.*

Art. 35. Les Capitulations arrêtées entre les Parties Contractantes doivent tenir compte des règles de l'honneur militaire.

Une fois fixées, elles doivent être scrupuleusement observées par les deux parties.

Chapitre V.—*De l'Armistice.*

Art. 36. L'armistice suspend les opérations de guerre par un accord mutuel des parties belligérantes. Si la durée n'en est pas déterminée, les parties belligérantes peuvent reprendre en tout temps les opérations, pourvu toutefois que l'ennemi soit averti en temps convenu, conformément aux conditions de l'armistice.

Art. 37. L'armistice peut être général ou local. Le premier suspend partout les opérations de guerre des États belligérants ; le second, seulement entre certaines fractions des armées belligérantes et dans un rayon déterminé.

Art. 38. L'armistice doit être notifié officiellement et en temps utile aux autorités compétentes et aux troupes. Les hostilités sont suspendues immédiatement après la notification ou au terme fixé.

Art. 39. Il dépend des Parties Contractantes de fixer, dans les clauses de l'armistice, les rapports qui pourraient avoir lieu, sur le théâtre de la guerre, avec les populations et entre elles.

Art. 40. Toute violation grave de l'armistice, par l'une des Parties, donne à l'autre le droit de le dénoncer, et même, en cas d'urgence, de reprendre immédiatement les hostilités.

Art. 41. La violation des clauses de l'armistice, par des particuliers agissant de leur propre initiative, donne droit seulement à réclamer la punition des coupables, et s'il y a lieu, une indemnité pour les pertes éprouvées.

Section III.—*De l'Autorité Militaire sur le Territoire de l'État Ennemi.*

Art. 42. Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de armée ennemie.

L'occupation ne s'étend qu'aux territoires où cette autorité est établie et en mesure de s'exercer.

Art. 43. L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui

Art. 34. The envoy loses his rights of inviolability if it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery.

Chapter IV.—*On Capitulations.*

Art. 35. Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honour.

When once settled, they must be scrupulously observed by both the parties.

Chapter V.—*On Armistices.*

Art. 36. An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Art. 37. An armistice may be general or local. The first suspends all military operations of the belligerent States ; the second, only those between certain fractions of the belligerent armies and in a fixed radius.

Art. 38. An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

Art. 39. It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.

Art. 40. Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

Art. 41. A violation of the terms of the armistice by private individuals acting on their own initiative only confers the right of demanding the punishment of the offenders, and, if necessary, indemnity for the losses sustained.

Section III.—*On Military Authority over Hostile Territory.*

Art. 42. Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation applies only to the territory where such authority is established, and in a position to assert itself.

Art. 43. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to

dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics, en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

Art. 44. Il est interdit de forcer la population d'un territoire occupé à prendre part aux opérations militaires contre son propre pays.

Art. 45. Il est interdit de contraindre la population d'un territoire occupé à prêter serment à la Puissance ennemie.

Art. 46. L'honneur et les droits de la famille, la vie des individus, et la propriété privée, ainsi que les convictions religieuses et l'exercice des cultes, doivent être respectés.

La propriété privée ne peut pas être confisquée.

Art. 47. Le pillage est formellement interdit.

Art. 48. Si l'occupant prélève, dans le territoire occupé, les impôts, droits et péages établis au profit de l'État, il le fera, autant que possible, d'après les règles de l'assiette et de la répartition en vigueur, et il en résultera pour lui l'obligation de pourvoir aux frais de l'administration du territoire occupé dans la mesure où le Gouvernement légal y était tenu.

Art. 49. Si, en dehors des impôts visés à l'Article précédent, l'occupant prélève d'autres contributions en argent dans le territoire occupé, ce ne pourra être que pour les besoins de l'armée ou de l'administration de ce territoire.

Art. 50. Aucune peine collective, pécuniaire, ou autre, ne pourra être édictée contre les populations à raison de faits individuels dont elles ne pourraient être considérées comme solidairement responsables.

Art. 51. Aucune contribution ne sera perçue qu'en vertu d'un ordre écrit et sous la responsabilité d'un Général-en-Chef.

Il ne sera procédé, autant que possible, à cette perception que d'après les règles de l'assiette et de la répartition des impôts en vigueur.

Pour toute contribution un reçu sera délivré aux contribuables.

Art. 52. Des réquisitions en nature et des services ne pourront être réclamés des communes ou des habitants que pour les besoins de l'armée d'occupation. Ils seront en rapport evec ressources du pays et de telle nature qu'ils n'impliquent pas pour les populations l'obligation de prendre part aux opérations de la guerre contre leur patrie.

Ces réquisitions et ces services ne seront réclamés qu'avec l'autorisation du Commandant dans la localité occupée.

Les prestations en nature seront, autant que possible, payées au comptant ; sinon, elles seront constatées pas des reçus.

Art. 53. L'armée qui occupe un territoire ne pourra saisir que le numéraire, les fonds, et les valeurs exigibles appartenant en propre à État, les dépôts d'armes, moyen de transport, magasins et approvisionnements, et, en général, toute propriété mobilière de l'État de nature à servir aux opérations de la guerre.

re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Art. 44. Any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited.

Art. 45. Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.

Art. 46. Family honours and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.

Private property cannot be confiscated.

Art. 47. Pillage is formally prohibited.

Art. 48. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do it, as far as possible, in accordance with the rules in existence and the assessment in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound.

Art. 49, If, besides the taxes mentioned in the preceding Article, the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory.

Art. 50. No general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

Art. 51. No tax shall be collected except under a written order and on the responsibility of a Commander-in-Chief.

This collection shall only take place, as far as possible, in accordance with the rules in existence and the assessment of taxes in force.

For every payment a receipt shall be given to the tax-payer.

Art. 52. Neither requisitions in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country.

These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

The contributions in kind shall, as far as possible, be paid for in ready money ; if not, their receipt shall be acknowledged.

Art. 53. An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

Le matériel de chemins de fer, les télégraphes de terre, les téléphones, les bateaux à vapeur et autres navires, en dehors des cas régis par la loi maritime, de même que les dépôts d'armes, et en général toute espèce de munitions de guerre, même appartenant à des Sociétés ou à des personnes privées, sont également des moyens de nature à servir aux opérations de la guerre, mais devront être restitués, et les indemnités seront réglées à la paix.

Art. 54. Le matériel des chemins de fer provenant d'États neutres, qu'il appartienne à ces États ou à des Sociétés ou personnes privées, leur sera renvoyé aussitôt que possible.

Art. 55. L'État occupant ne se considérera que comme administrateur et usufruitier des édifices publics, immeubles, forêts, et exploitations agricoles appartenant à l'État ennemi et se trouvant dans le pays occupé. Il devra sauvegarder le fond de ces propriétés et les administrer conformément aux règles de l'usufruit.

Art. 56. Les biens de communes, ceux des établissements consacrés aux cultes, à la charité, et à l'instruction, aux arts et aux sciences, même appartenant à l'État, seront traités comme la propriéte privée.

Toute saisie, destruction, ou dégradation intentionnelle de semblables établissements, de monuments historiques, d'œuvres d'art et de science, est interdite, et doit être poursuivie.

SECTION IV.—*Des Belligérants internés et des Blessés soignés chez les Neutres.*

Art. 57. L'État neutre qui reçoit sur son territoire des troupes appartenant aux armées belligérantes, les internera, autant que possible, loin du théâtre de la guerre.

Il pourra les garder dans des camps, et même les enfermer dans des forteresses ou dans des lieux appropriés à cet effet.

Il décidera si les officiers peuvent être laissés libres en prenant l'engagement sur parole de ne pas quitter le territoire neutre sans autorisation.

Art. 58. A défaut de Convention spéciale, l'État neutre fournira aux internés les vivres, les habillements, et les secours commandés par l'humanité.

Bonification sera faite, à la paix, des frais occasionnés par l'internement.

Art. 59. L'État neutre pourra autoriser le passage sur son territoire des blessés ou malades appartenant aux armées belligérantes, sous la réserve que les trains qui les aménéront ne transporteront ni personnel ni matériel de guerre. En pareil cas, l'État neutre est tenu de prendre les mesures de sûreté et de contrôle nécessaires à cet effet.



Railway plant, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depôts of arms, and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them.

Art. 54. The plant of railways coming from neutral States, whether the property of those States, or of Companies, or of private persons, shall be sent back to them as soon as possible.

Art. 55. The occupying State shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct.

Art. 56. The property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.

SECTION IV.—*On the Internment of Belligerents and the Care of the Wounded in Neutral Countries.*

Art. 57. A neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It can keep them in camps, and even confine them in fortresses or localities assigned for this purpose.

It shall decide whether officers may be left at liberty on giving their parole that they will not leave the neutral territory without authorisation.

Art. 58. Failing a special Convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace, the expenses caused by the internment shall be made good.

Art. 59. A neutral State may authorise the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures of safety and control as may be necessary for the purpose.

Les blessés ou malades amenés dans ces conditions sur le territoire neutre par un des belligérants, et qui appartiendraient à la partie adverse, devront être gardés par l'État neutre, de manière qu'ils ne puissent de nouveau prendre part aux opérations de la guerre. Celui-ci aura les mêmes devoirs quant aux blessés ou malades de l'autre armée qui lui seraient confiés.

Art. 60. La Convention de Genève s'applique aux malades et aux blessés internés sur territoire neutre.

Wounded and sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

Art. 60. The Geneva Convention applies to sick and wounded interned in neutral territory.

## FORM OF RATIFICATION

The form adopted for ratification of the above was as follows:—

Le premier Soussigné déclare avoir remis et le second Soussigné déclare avoir reçu, pour être déposé dans les archives d'État du Royaume des Pays-Bays, l'Acte de (name of State in question), portant la ratification de la *Convention concernant les Lois et Coutumes de la Guerre sur Terre.*

En foi de quoi les Soussignés ont dressé le présent procès-verbal en un seul exemplaire dont une copie, certifiée conforme, sera transmise par la voie diplomatique à toutes les Puissances qui ont été représentées à la Conférence Internationale de la Paix de La Haye.

Fait en cette ville, le, &c.

L'Envoyé Extraordinaire et Ministre
Plénipotentiaire de, &c.

Le Ministre des Affaires Étrangères de Sa
Majesté la Reine des Pays-Bas, &c.

Certifié pour copie conforme:

Le Secrétaire-Général
du Département des Affaires Étrangères, &c.

## (*c*) INTERNATIONAL CONVENTION FOR ADAPTING TO MARITIME WARFARE THE PRINCIPLES OF THE GENEVA CONVENTION OF AUGUST 22, 1864

*Signed at The Hague, July 29, 1899*

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes; Sa Majesté l'Empereur d'Allemagne, Roi de Prusse; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie; Sa Majesté le Roi des Belges; Sa Majesté l'Empereur de Chine; Sa Majesté le Roi de Danemark; Sa Majesté le Roi d'Espagne, et en son nom Sa Majesté la Reine-Régente du Royaume; le Président des États-Unis d'Amérique; le Président des États-Unis Mexicains; le Président de la République Française; Sa Majesté le Roi des Hellènes; Sa Majesté le Roi d'Italie; Sa Majesté l'Empereur du Japon; Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau; Son Altesse le Prince de Monténégro; Sa Majesté la Reine des Pays-Bas; Sa Majesté Impériale le Schah de Perse; Sa Majesté le Roi de Portugal et des Algarves, &c.; Sa Majesté le Roi de Roumanie; Sa Majesté l'Empereur de Toutes les Russies; Sa Majesté le Roi de Serbie; Sa Majesté le Roi de Siam; Sa Majesté le Roi de Suède et de Norvège; le Conseil Fédéral Suisse; Sa Majesté l'Empereur des Ottomans; et Son Altesse Royale le Prince de Bulgarie;

Également animés du désir de diminuer autant qu'il dépend d'eux les maux inséparables de la guerre et voulant dans ce but adapter à la guerre maritime les principes de la Convention de Genève du 22 Août, 1864, ont résolu de conclure une Convention à cet éffet;

Ils ont en conséquence nommé pour leurs Plénipotentiaires, savoir:

(*Official translation.*)

HER Majesty the Queen, &c., &c.

Alike animated by the desire to diminish, as far as depends on them, the evils inseparable from warfare, and wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of the 22nd August, 1864, have decided to conclude a Convention to this effect:

They have, in consequence, appointed as their Plenipotentiaries, &c., &c., &c.

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, Sir Henry Howard, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye;

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, son Excellence le Comte de Münster, Prince de Derneburg, son Ambassadeur à Paris;

Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie, son Excellence le Comte R. de Welsersheimb, son Ambassadeur Extraordinaire et Plénipotentiaire; M. Alexandre Okolicsanyi d'Okolicsna, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye;

Sa Majesté le Roi des Belges, son Excellence M. Auguste Beernaert, son Ministre d'État, Président de la Chambre des Représentants; M. le Comte Degrelle Rogier, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye; M. le Chevalier Descamps, Sénateur;

Sa Majesté l'Empereur de Chine, M. Yang Yü, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg ;

Sa Majesté le Roi de Danemark, son Chambellan Fr. E. de Bille, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Londres ;

Sa Majesté le Roi d'Espagne, et en son nom Sa Majesté la Reine-Régente du Royaume, son Excellence le Duc de Tetuan, Ancien Ministre des Affaires Étrangères ; M. W. Ramirez de Villa Urrutia, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Bruxelles ; M. Arthur de Baguer, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Le Président des États-Unis d'Amérique, M. Stanford Newel, Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Le Président des États-Unis Mexicains. M. de Mier, Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ; M. Zenil, Ministre-Résident à Bruxelles ;

Le Président de la République Française, M. Léon Bourgeois, Ancien Président du Conseil, Ancien Ministre des Affaires Étrangères, Membre de la Chambre des Députés ; M. Georges Bihourd, Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ; M. le Baron d'Estournelles de Constant, Ministre Plénipotentiaire, Membre de la Chambre des Députés ;

Sa Majesté le Roi des Hellènes, M. N. Delyanni, Ancien Président du Conseil, Ancien Ministre des Affaires Étrangères, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ;

Sa Majesté le Roi d'Italie, son Excellence le Comte Nigra, son Ambassadeur à Vienne, Sénateur du Royaume ; M. le Comte A. Zannini, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ; M. le Commandeur Guido Pompilj, Député au Parlement Italien ;

Sa Majesté l'Empereur du Japon, M. I. Motono, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Bruxelles ;

Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau, son Excellence M. Eyschen, son Ministre d'État, Président du Gouvernement Grand-Ducal ;

Son Altesse le Prince de Monténégro, son Excellence M. le Conseiller Privé Actuel de Staal, Ambassadeur de Russie à Londres ;

Sa Majesté la Reine des Pays-Bas, M. le Jonkheer A. P. C. van Karnebeek, Ancien Ministre des Affaires Étrangères, Membre de la Seconde Chambre des États-Généraux ; M. le Général J. C. C. den Beer Poortugael, Ancien Ministre de la Guerre, Membre du Conseil d'Etat ; M. T. M. C. Asser, Membre du Conseil d'État ; M. E. N. Rahusen, Membre de la Première Chambre des États-Généraux ;

Sa Majesté Impériale le Schah de Perse, son Aide-de-camp, Général Mirza Riza Khan, Arfa-ud-Dovleh, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg et à Stockholm ;

Sa Majesté le Roi de Portugal et des Algarves, &c., M. le Comte de Macedo, Pair du Royaume, Ancien Ministre de la Marine et des Colonies, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Madrid ; M. d'Ornellas et Vasconcellos, Pair du Royaume, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Pétersbourg ; M. le Comte de Selir, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté le Roi de Roumanie, M. Alexandre Beldiman, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Berlin ; M. Jean N. Papiniu, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye ;

Sa Majesté l'Empereur de Toutes les Russies, son Excellence M. le Conseiller Privé Actuel de Staal, son Ambassadeur à Londres ; M. de Martens, Membre Permanent du Conseil du Ministère Impérial des Affaires Étrangères, son Conseiller Privé ; son Conseiller d'Etat Actuel de Basily, Chambellan, Directeur du Premier Département du Ministère Impérial des Affaires Étrangères ;

Sa Majesté le Roi de Serbie, M. Miyatovitch, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Londres et à La Haye ;

Sa Majesté le Roi de Siam, M. Phya Suriya Nuvatr, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Saint-Petersbourg et à Paris ; M. Phya Visuddha Suriyasakti, son Envoyé Extraordinaire et Ministre Plénipotentiaire à La Haye et à Londres ;

Sa Majesté le Roi de Suède et de Norvège, M. le Baron de Bildt, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Rome ;

Le Conseil Fédéral Suisse, M. le Dr. Arnold Roth, Envoyé Extraordinaire et Ministre Plénipotentiaire à Berlin ;

Sa Majesté l'Empereur des Ottomans, son Excellence Turkhan Pacha, Ancien Ministre des Affaires Étrangères, Membre de son Conseil d'État ; Noury Bey, Secrétaire-Général au Ministère des Affaires Étrangères ;

Son Altesse Royale le Prince de Bulgarie, M. le Dr. Dimitri Stancioff, Agent Diplomatique à Saint-Pétersbourg ; M. le Major Christo Hessaptchieff, Attaché Militaire à Belgrade ;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes :—

ARTICLE I.

Les bâtiments-hôpitaux militaires, c'est-à-dire les bâtiments construits ou aménagés par les États spécialement et uniquement en vue de porter secours aux blessés, malades, et naufragés, et dont les noms auront été communiqués, à l'ouverture ou au cours des hostilités, en tout cas avant toute mise en usage, aux Puissances belligérantes, sont respectés et ne peuvent être capturés pendant la durée des hostilités.

Ces bâtiments ne sont pas non plus assimilés aux navires de guerre au point de vue de leur séjour dans un port neutre.

ARTICLE II.

Les bâtiments-hospitaliers, équipés en totalité ou en partie aux frais des particuliers ou des Sociétés de Secours officiellement reconnues, sont également respectés et exempts de capture, si la Puissance belligérante dont ils dépendent, leur a donné une commission officielle et en a notifié les noms à la Puissance adverse à l'ouverture ou au cours des hostilités, en tout cas avant toute mise en usage.

Ces navires doivent être porteurs d'un document de l'autorité compétente déclarant qu'ils ont été soumis à son contrôle pendant leur armement et à leur départ final.

ARTICLE III.

Les bâtiments-hospitaliers, équipés en totalité ou en partie aux frais des particuliers ou des Sociétés officiellement reconnues de pays neutres, sont réspectés et exempts de capture, si la Puissance neutre dont ils dépendent leur a donné une commission officielle et en a notifié les noms aux Puissances belligérantes à l'ouverture ou au cours des hostilités, en tout cas avant toute mise en usage.

ARTICLE IV.

Les bâtiments qui sont mentionnés dans les Articles I, II, et III, porteront secours et assistance aux blessés, malades, et naufragés des belligérants sans distinction de nationalité.

Les Gouvernements s'engagent à n'utiliser ces bâtiments pour aucun but militaire.

Ces bâtiments ne devront gêner en aucune manière les mouvements des combattants.

Pendant et après le combat, ils agiront à leurs risques et périls.

Les belligérants auront sur eux le droit de contrôle et de visite ; ils pourront refuser leur concours, leur enjoindre de

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions :—

ARTICLE I.

Military hospital-ships, that is to say, ships constructed or assigned by States specially and solely for the purpose of assisting the wounded, sick, or shipwrecked, and the names of which shall have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE II.

Hospital-ships, equipped wholly or in part at the cost of private individuals or officially-recognized Relief Societies, shall likewise be respected and exempt from capture, provided the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships should be furnished with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE III.

Hospital-ships, equipped wholly or in part at the cost of private individuals or officially-recognized Societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to whom they belong has given them an official commission and notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE IV.

The ships mentioned in Articles I., II., and III. shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents independently of their nationality.

The Governments engage not to use these ships for any military purpose.

These ships must not in any way hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and visit them ; they can refuse to help them, order them off, make them take a certain course, and

s'éloigner, leur imposer une direction déterminée, et mettre à bord un commissaire, même les détenir, si la gravité des circonstances l'exigeait.

Autant que possible, les belligérants inscriront sur le journal de bord des bâtiments-hospitaliers les ordres qu'ils leur donneront.

ARTICLE V.

Les bâtiments-hôpitaux militaires seront distingués par une peinture extérieure blanche avec une bande horizontale verte d'un mètre et demi de largeur environ.

Les bâtiments qui sont mentionnés dans les Articles II et III, seront distingués par une peinture extérieure blanche avec une bande horizontale rouge d'un mètre et demi de largeur environ.

Les embarcations des bâtiments qui viennent d'être mentionnés, comme les petits bâtiments qui pourront être affectés au service hospitalier, se distingueront par une peinture analogue.

Tous les bâtiments-hospitaliers se feront reconnaître en hissant, avec leur pavillon national, le pavillon blanc à croix rouge prévu par la Convention de Genève.

ARTICLE VI.

Les bâtiments de commerce, yachts, ou embarcations neutres, portant ou recueillant des blessés, des malades, ou des naufragés des belligérants, ne peuvent être capturés pour le fait de ce transport, mais ils restent exposés à la capture pour les violations de neutralité qu'ils pourraient avoir commises.

ARTICLE VII.

Le personnel religieux, médical, et hospitalier de tout bâtiment capturé est inviolable et ne peut être fait prisonnier de guerre.[1] Il emporte, en quittant le navire, les objets et les instruments de chirurgie qui sont sa propriété particulière.

Ce personnel continuera à remplir ses fonctions tant que cela sera nécessaire et il pourra ensuite se retirer lorsque le Commandant-en-chef le jugera possible.

Les belligérants doivent assurer à ce personnel tombé entre leurs mains la jouissance intégrale de son traitement.

ARTICLE VIII.

Les marins et les militaires embarqués blessés ou malades, à quelque nation qu'ils appartiennent, seront protégés et soignés par les capteurs.

ARTICLE IX.

Sont prisonniers de guerre les naufragés, blessés, ou malades d'un belligérant qui tombent au pouvoir de l'autre. Il appartient à celui-ci de décider, suivant les circonstances, s'il convient de les

put a Commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall inscribe in the sailing papers of the hospital-ships the orders they give them.

ARTICLE V.

The military hospital-ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles II. and III. shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital-ships shall make themselves known by hoisting, together with their national flag, the white flag with a red cross provided by the Geneva Convention.

ARTICLE VI.

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE VII.

The religious, medical, or hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the Commander-in-chief considers it possible.

The belligerents must guarantee to the staff that has fallen into their hands the enjoyment of their salaries intact.

ARTICLE VIII.

Sailors and soldiers who are taken on board when sick or wounded, to whatever nation they belong, shall be protected and looked after by the captors.

ARTICLE IX.

The shipwrecked, wounded, or sick of one of the belligerents who fall into the hands of the other, are prisoners of war. The captor must decide, ac-

[1] Compare Mr. von Schlözer's suggestion, p. 199.

garder, de les diriger sur un port de sa nation, sur un port neutre, ou même sur un port de l'adversaire. Dans ce dernier cas, les prisonniers ainsi rendus à leur pays ne pourront servir pendant la durée de la guerre.

ARTICLE X.

Les naufragés, blessés ou malades, qui sont débarqués dans un port neutre, du consentement de l'autorité locale, devront, à moins d'un arrangement contraire de l'État neutre avec les États belligérants, être gardés par l'État neutre de manière qu'ils ne puissent pas de nouveau prendre part aux opérations de la guerre.[1]

ARTICLE XI.

Les règles contenues dans les Articles ci-dessus ne sont obligatoires que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Les dites règles cesseront d'être obligatoires du moment où, dans une guerre entre des Puissances Contractantes, une Puissance non contractante se joindrait à l'un des belligérants.

ARTICLE XII.

La présente Convention sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

ARTICLE XIII.

Les Puissances non signataires, qui auront accepté la Convention de Genève du 22 Août, 1864, sont admises à adhérer à la présente Convention.

Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

ARTICLE XIV.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi les Plénipotentiaires ont signé la présente Convention, et l'ont revêtue de leurs cachets.

cording to circumstances, if it is best to keep them or send them to a port of his own country, to a neutral port, or even to a hostile port. In the last case, prisoners thus repatriated cannot serve as long as the war lasts.

ARTICLE X.

The shipwrecked, wounded, or sick, who are landed at a neutral port with the consent of the local authorities, must, failing a contrary arrangement between the neutral State and the belligerents, be guarded by the neutral State, so that they may not be again able to take part in the military operations.

The expenses of entertainment and internment shall be borne by the State to which the shipwrecked, wounded, or sick belong.[1]

ARTICLE XI.

The rules contained in the above Articles are binding only on the Contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

ARTICLE XII.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at the Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

ARTICLE XIII.

The non-signatory Powers who accepted the Geneva Convention of the 22nd August, 1864, are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

ARTICLE XIV.

In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the respective Plenipotentiaries have signed the present Convention and affixed their seals thereto.

1 This Article has been excluded from all the ratifications. See Form of Ratification, p. 248. Are there not similar objections to Art. LIX. § 2 of the Convention on the Laws and Customs of War? see p. 242. A similar provision to Art. X. has now found its way into the revised Geneva Convention. See Art. II. § 5, p. 265.

Fait à La Haye, le vingt-neuf Juillet, mil huit cent quatre-vingt dix-neuf, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

(Signatures).[1]

Done at the Hague the 29th July, 1899, in single copy, which shall be kept in the archives of the Government of the Netherlands, and copies of which, duly certified, shall be sent through the diplomatic channel to the Contracting Powers.

[1] Same as at pp. 14, 15.

## FORM OF RATIFICATION

The form adopted for the ratification of the above was as follows:—

Le premier Soussigné déclare avoir remis et le second Soussigné déclare avoir reçu, pour être déposé dans les archives d'État du Royaume des Pays-Bas, l'Acte de (name of State in question), portant la ratification de la *Convention pour l'Adaptation à la Guerre Maritime des Principes de la Convention de Genève du 22 Août*, 1864.

L'Article X est exclu de cette ratification.

En foi de quoi les Soussignés ont dressé le présent procès-verbal en un seul exemplaire dont une copie, certifiée conforme, sera transmise par la voie diplomatique à toutes les Puissances qui ont été représentées à la Conférence Internationale de la Paix de La Haye.

Fait en cette ville, le, &c.

L'Envoyé Extraordinaire et Ministre
Plénipotentiaire de, &c.

Le Ministre des Affaires Étrangéres de Sa
Majesté la Reine des Pays-Bas, &c.

Certifié pour copie conforme :

Le Secrétaire-Général
du Département des Affaires Étrangères, &c.

# DECLARATIONS OF THE INTERNATIONAL PEACE CONFERENCE

*Signed at The Hague, July 29, 1899*

## (*d*) RELATIVE TO PROJECTILES FROM BALLOONS.

Les Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Décembre) 1868,

Déclarent :

Les Puissances Contractantes consentent, pour une durée de cinq ans, à l'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

(*Official translation.*)

The Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorised to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December) 1868,

Declare that :

The Contracting Powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of a similar nature.

The present Declaration is only binding on the Contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, of which a copy, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherlands Government, and communicated by it to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherlands Government, and by it forthwith communicated to all the other Contracting Powers.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye le 29 Juillet 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

## (*e*) RELATIVE TO PROJECTILES DIFFUSING DELETERIOUS GASES.

Les Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Décembre) 1868,

Déclarent :

Les Puissances Contractantes s'interdisent l'emploi de projectiles qui ont pour but unique de répandre des gaz asphyxiants ou délétères.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

This denunciation shall only affect the notifying Power.

(*Official translation.*)

The Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorised to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December) 1868,

Declare that :

The Contracting Powers agree to abstain from the use of projectiles the object of which is the diffusion of asphyxiating or deleterious gases.

The present Declaration is only binding on the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when in a war between the Contracting Powers, one of the belligerents shall be joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers can adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherlands Government, and by it communicated to all the other Contracting Powers.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye le 29 Juillet 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

## (*f*) RELATIVE TO EXPANDING BULLETS.

Les Soussignés, Plenipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Décembre) 1868,

Déclarent :

Les Puissances Contractantes s'interdisent l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, telles que les balles à enveloppe dure dont l'enveloppe ne couvrirait pas entièrement le noyau ou serait pourvue d'incisions.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Government of the Netherlands and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

(*Official translation.*)

The Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorised to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December) 1868,

Declare that :

The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions.

The present Declaration is only binding for the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers

adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye le 29 Juillet 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

by means of a written notification addressed to the Netherlands Government, and by it communicated to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherlands Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

## (g) FINAL ACT OF THE INTERNATIONAL PEACE CONFERENCE

*Signed at The Hague, July 29, 1899*

La Conférence Internationale de la Paix, convoquée dans un haut sentiment d'humanité par Sa Majesté l'Empereur de Toutes les Russies, s'est réunie sur l'invitation du Gouvernement de Sa Majesté la Reine des Pays Bas à la Maison Royale du Bois à La Haye, le 18 Mai 1899.

Les Puissances dont l'énumération suit, ont pris part à la Conférence, pour laquelle elles avaient désigné les Délégués nommés ci-après :

[*Nous des Délégués.*]

Dans une série de réunions, tenues du 18 Mai au 29 Juillet 1899, ou les Délégués précités ont été constamment animés du désir de réaliser, dans la plus large mesure possible, les vues généreuses de l'auguste Initiateur de la Conférence et les intentions de leurs Gouvernements, la Conférence a arrêté, pour être soumis à la signature des Plénipotentiaires, le texte des Conventions et Déclarations énumérées ci-après et annexées au présent Acte :

I. Convention pour le réglement pacifique des conflits internationaux.

II. Convention concernant les lois et coutumes de la guerre sur terre.

III. Convention pour l'adaptation à la guerre maritime des principes de la Convention de Genère du 22 Août 1864.

Trois Déclarations concernant :

1. L'interdiction de lancer des projectiles et de explosifs du haut des ballons ou par d'autres modes analogues nouveaux.

2. L'interdiction de l'emploi des projectiles qui ont pour but unique de répandre des gaz asphyxiants ou délétères.

3. L'interdiction de l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, telles que les balles à enveloppe dure dont l'enveloppe ne couvrirait pas entièrement le noyau ou serait pourvue d'incisions.

Ces Conventions ou Déclarations formeront autant d'Actes séparés. Ces actes porteront la date de ce jour et pourront être signés jusqu'au 31 Décembre 1899, par les Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye.

Obeissant aux mêmes inspirations, la Conférence a adopté à l'unanimité la Résolution suivante :

"La Conférence estime que la limitation des charges militaires qui pèsent actuellement sur le monde est grandement

(*Official translation.*)

The International Peace Conference, convoked in the best interests of humanity by His Majesty the Emperor of all the Russias, assembled on the invitation of the Government of Her Majesty, the Queen of the Netherlands, in the Royal House in the Wood at The Hague, on the 18th May 1899.

The Powers enumerated in the following list took part in the Conference, to which they appointed the Delegates named below :

[*Names of Delegates.*]

In a series of meetings, between the 18th May and the 29th July, 1899, in which the constant desire of the Delegates above mentioned has been to realise, in the fullest manner possible, the generous views of the August Initiator of the Conference and the intentions of their Governments, the Conference has agreed, for submission for signature by the Plenipotentiaries, on the text of the Conventions and Declarations enumerated below and annexed to the present Act :

I. Convention for the pacific settlement of international conflicts.

II. Convention regarding the laws and customs of war by land.

III. Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of the 22nd August 1864.

IV. Three Declarations :

1. To prohibit the launching of projectiles and explosives from balloons or by other similar new methods.

2. To prohibit the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases.

3. To prohibit the use of bullets which expand and flatten easily in the human body, such as bullets with a hard envelope, of which the envelope does not entirely cover the core, or is pierced with incisions.

These Conventions and Declarations shall form so many separate Acts. These Acts shall be dated this day and may be signed up to the 31st December 1899, by the Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague.

Guided by the same sentiments, the Conference has adopted unanimously the following resolution :

"The Conference is of opinion that the restriction of military budgets, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind."

désirable pour l'accroissement du bien-être matériel et moral de l'humanité."

Elle a, en outre, émis les vœux suivants :

1. La Conférence, prenant en considération les démarches préliminaires faites par le Gouvernement Fédéral Suisse pour la révision de la Convention de Genève, émet le vœu qu'il soit procédé à bref délai à la réunion d'une Conférence spéciale ayant pour objet la révision de cette Convention.[1]

Ce vœu a été voté à l'unanimité.

2. La Conférence émet le vœu que la question des droits et des devoirs des neutres soit inscrite au programme d'une prochaine Conférence.

3. La Conférence émet le vœu que les questions relatives aux fusils et aux canons de marine, telles qu'elles ont été examinées par elle, soient mises à l'étude par les Gouvernements, en vue d'arriver à une entente concernant la mise en usage de nouveaux types et calibres.

4. La Conférence émet le vœu que les Gouvernements tenant compte des propositions faites dans la Conférence, mettent à l'étude la possibilité d'une entente concernant la limitation des forces armées de terre et de mer et des budgets de guerre.

5. La Conférence émet le vœu que la proposition tendant à déclarer l'inviolabilité de la propriété privée dans la guerre sur mer soit renvoyée à l'examen d'une Conférence ultérieure.

6. La Conférence émet le vœu que la proposition de règler la question du bombardement des ports, villes, et villages par une force navale soit renvoyée à l'examen d'une Conférence ultérieure.

Les cinq derniers vœux ont été votés à l'unanimité sauf quelques abstentions.

En foi de quoi, les Plénipotentiaires ont signé le présent Acte, et y ont apposé leurs cachets.

Fait a La Haye, le 29 Juillet 1899, en un seul exemplaire, qui sera déposé au Ministère des Affaires Étrangères, et dont des copies certifiées conformes, seront délivrées à toutes les Puissances représentées à la Conférence.

[*Signatures.*]

It has, besides, formulated the following wishes:

1. The Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, expresses the wish that steps may be shortly taken for the assembly of a special Conference having for its object the revision of that Convention.

This wish was voted unanimously.

2. The Conference expresses the wish that the questions of the rights and duties of neutrals may be inserted in the programme of a Conference in the near future.

3. The Conference expresses the wish that the questions with regard to rifles and naval guns, as considered by it, may be studied by the Governments with the object of coming to an agreement respecting the employment of new types and calibres.

4. The Conference expresses the wish that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea, and of war budgets.

5. The Conference expresses the wish that the proposal, which contemplates the declaration of the inviolability of private property in naval warfare, may be referred to a subsequent Conference for consideration.

6. The Conference expresses the wish that the proposal to settle the question of the bombardment of ports, towns, and villages by a naval force may be referred to a subsequent Conference for consideration.

The last five wishes were voted unanimously, saving some abstentions.

In faith of which, the Plenipotentiaries have signed the present Act, and have affixed their seals thereto.

Done at The Hague, 29th July 1899, in one copy only, which shall be deposited in the Ministry for Foreign Affairs, and of which copies, duly certified, shall be delivered to all the Powers represented at the Conference.

[*Signatures.*]

[1] This Conference was held in 1906. See Convention adopted, p. 261.

# TABLEAU DES RATIFICATIONS DES PUISSANCES
## REPRÉSENTÉES À LA CONFÉRENCE INTERNATIONALE DE LA PAIX (1899)

| | I. La Convention pour le règlement pacifique des conflits internationaux. | II. La Convention concernant les lois et coutumes de la guerre sur terre. | III. La Convention pour l'adaptation à la guerre maritime des principes de la Convention de Genève du 22 août 1864. (*L'article 10 est exclu de la ratification.*) | IV 1°. La Déclaration concernant l'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux. | IV 2°. La Déclaration concernant l'interdiction de l'emploi de projectiles qui ont pour but unique de répandre des gaz asphyxiants ou délétères. | IV 3°. La Déclaration concernant l'interdiction de l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, etc. |
|---|---|---|---|---|---|---|
| **A.** PUISSANCES, QUI ONT PROCÉDÉ À L'ÉCHANGE DES ACTES DE RATIFICATION. | | | | | | |
| Allemagne | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Autriche-Hongrie | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Belgique | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Chine | 21 nov^e 1904 | ni signée, ni ratifiée | 21 nov^e 1904 | 21 nov^e 1904 | 21 nov^e 1904 | 21 nov^e 1904 |
| Danemark | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Espagne | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| États-Unis d'Amérique | 4 sept^e 1900 sous réserve de la déclaration faite dans la séance plénière de la Conférence du 25 juillet 1899 | 9 avril 1902 | 4 sept^e 1900 | 4 sept^e 1900 | ni signée, ni ratifiée | ni signée, ni ratifiée |
| États-Unis Mexicains | 17 avril 1901 | 17 avril 1901 | 17 avril 1901 | 17 avril 1901 | 17 avril 1901 | 17 avril 1901 |
| France | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Grande-Bretagne | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | ni signée, ni ratifiée | ni signée, ni ratifiée | ni signée, ni ratifiée |
| Grèce | 4 avril 1901 | 4 avril 1901 | 4 avril 1901 | 4 avril 1901 | 4 avril 1901 | 4 avril 1901 |
| Italie | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Japon | 6 oct^e 1900 | 6 oct^e 1900 | 6 oct^e 1900 | 6 oct^e 1900 | 6 oct^e 1900 | 6 oct^e 1900 |
| Luxembourg | 12 juillet 1901 | 12 juillet 1901 | 12 juillet 1901 | 12 juillet 1901 | 12 juillet 1901 | 12 juillet 1901 |
| Monténégro | 16 oct^e 1900 | 16 oct^e 1900 | 16 oct^e 1900 | 16 oct^e 1900 | 16 oct^e 1900 | 16 oct^e 1900 |
| Pays-Bas | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |

| | I. La Convention pour le règlement pacifique des conflits internationaux. | II. La Convention concernant les lois et coutumes de la guerre sur terre. | III. La Convention pour l'adaptation à la guerre maritime des principes de la Convention de Genève du 22 août 1864. (*L'article 10 est exclude la ratification.*) | IV 1°. La Déclaration concernant l'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux. | IV 2°. La Déclaration concernant l'interdiction de l'emploi de projectiles qui ont pour but unique de répandre des gaz asphyxiants ou délétères. | IV 3°. La Déclaration concernant l'interdiction de l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, etc. |
|---|---|---|---|---|---|---|
| Perse | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Portugal | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | ni signée, ni ratifiée |
| Roumanie | 4 sept^e 1900 sous les réserves formulées aux arts. 16, 17 et 19 de la présente Convention et consignées au Procès-verbal de la séance de la 3^eme Commission du 20 juillet 1899 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Russie | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Serbie | 11 mai 1901 sous les réserves consignées au Procès-verbal de la 3^eme Commission du 20 juillet 1899 | 11 mai 1901 | 11 mai 1901 | 11 mai 1901 | 11 mai 1901 | 11 mai 1901 |
| Siam | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Suède et Norvège | 4 sept^e 1900 | signée, mais pas encore ratifiée | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |
| Suisse | 29 déc^e 1900 | ni signée, ni ratifiée | 29 déc^e 1900 | 29 déc^e 1900 | 29 déc^e 1900 | 29 déc^e 1900 |
| Turquie [1] | signée, mais pas encore ratifiée | signée, mais pas encore ratifiée | signée, mais pas encore ratifiée | signée, mais pas encore ratifiée | signée, mais pas encore ratifiée. | signée, mais pas encore ratifiée |
| Bulgarie | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 | 4 sept^e 1900 |

## B.

PUISSANCES QUI ONT ADHÉRÉ.

| | | | | | | |
|---|---|---|---|---|---|---|
| Corée | ... | 17 mars 1903 | 17 février 1903 | ... | ... | ... |
| Guatémala | ... | | 6 avril 1903 | ... | ... | ... |
| Péru | ... | 24 nov^e 1903 | 24 nov^e 1903 | ... | ... | ... |
| Salvador | ... | 20 juin 1902 | 20 juin 1902 | ... | ... | ... |

[1] Turkey has acceded *in extremis*, otherwise she would not, it seems, have been qualified to receive an invitation to the second Conference. Particulars are not yet made known.

# 2. CONVENTION RELATING TO THE STATUS OF HOSPITAL SHIPS

*Signed at The Hague, December* 21, 1904

Considérant que la Convention conclue à La Haye le 29 Juilllet 1899 pour l'adaptation à la guerre maritime des principes de la Convention de Genève du 22 Août 1864, a consacré le principe de l'intervention de la Croix Rouge dans les guerres navales par des dispositions en faveur des bâtiments hospitaliers ;

Désirant conclure une convention à l'effet de faciliter par des dispositions nouvelles la mission des dits bâtiments ;

Ont nommé comme Plénipotentiaires, savoir

lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes :

ARTICLE I.

Les bâtiments hospitaliers, à l'ègard desquels se trouvent remplies les conditions prescrites dans les Articles I. II. et III. de la Convention conclue à La Haye le 29 Juillet 1899 pour l'adaptation à la guerre maritime des principes de la Convention de Genève du 22 Août 1864, seront exemptés en temps de guerre, dans les ports des Parties contractantes de tous droits et taxes, imposés aux navires au profit de l'État.

ARTICLE II.

La disposition de l'article précédent n'empêche pas l'application, au moyen de la visite et d'autres formalités, des lois fiscales ou autres lois en vigueur dans ces ports.

ARTICLE III.

La régle contenue dans l'article premier n'est obligatoire que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

La dite règle cessera d'être obligatoire du moment où, dans une guerre entre des Puissances contractantes, une Puissance non-contractante se joindrait à l'un des belligérants.

ARTICLE IV.

La présente Convention qui, portant la date de ce jour, pourra être signée jusqu'au premier Octobre 1905 par les Puissances qui

(*Translation.*)

Seeing that the Convention concluded at The Hague on July 27, 1899, for the adaptation to naval warfare of the principles of the Geneva Convention of August 22, 1864, establishing the principle of the intervention of the Red Cross in naval war by provisions for the benefit of hospital ships ;

And desiring to conclude a Convention that by fresh provisions shall facilitate the mission of such vessels ;

Appointed as their Plenipotentiaries . . . who, after verification of their credentials found in due form, have agreed to the following provisions :

Art. I.—Hospital ships fulfilling the conditions prescribed in Articles I. II. and III. of the Convention concluded at The Hague on July 27, 1899, for the adaptation of the principles of the Geneva Convention of August 22, 1864, to naval warfare, shall in time of war be exempt in the ports of the Contracting Parties from all dues and taxes imposed on vessels for the benefit of the State.

Art. II.—The provision contained in the preceding article shall not prevent the exercise of the right of search and other formalities demanded by the fiscal and other laws in force in the said ports.

Art. III.—The rule laid down in Article I. is binding only upon the Contracting Powers in case of war between two or more of themselves. The said rule shall cease to be obligatory as soon as in a war between any of the Contracting Powers a non-contracting Power shall join one of the belligerents.

Art. IV.—The present Convention, which bears date of this day and may be signed up to October 1, 1905, by any Power which shall have

en auraient manifesté le désir, sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye. Il sera dressé du dépôt des ratifications un procès verbal, dont une copie, certifiée conforme, sera remise après chaque dépôt par la voie diplomatique à toutes les Puissances contractantes.

ARTICLE V.

Les Puissances non-signataires sont admises à adhérer à la présente Convention après le premier Octobre 1905.

Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays Bas et communiquée par celui-ci à toutes les autres Puissances contractantes.

ARTICLE IV.

S'il arrivait qu'une des Hautes Parties contractantes dénonçat la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances contractantes. Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à La Haye le vingt, et un Décembre mil neuf cent quatre, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

ACTE FINAL.

Au moment de procéder à la signature de la Convention ayant pour but d'exempter les bâtiments hospitaliers, en temps de guerre, dans les ports des Parties contractantes, de tous droits et taxes imposés aux navires au profit de l'État, les Plénipotentiaires signataires du présent Acte émettent le vœu, qu'en vue de la mission hautement humanitaire de ces navires, les Gouvernements contractants prennent les mesures nécessaires afin d'exempter, dans un bref délai, ces navires également du paiement des droits et taxes, prélevés dan leurs ports au profit d'autres que l'État, notamment de ceux qui sont perçus au profit des communes, des compagnies privées ou des particuliers.

En foi de quoi, les Plénipotentiaires ont signé le présent

expressed a wish to do so, shall be ratified as speedily as possible. The ratifications shall be deposited at The Hague. On the deposit of the ratifications, a *procès-verbal* shall be drawn up, of which a certified copy shall be conveyed by diplomatic channels, after the deposit of each ratification, to all the Contracting Powers.

Art. V.—Non-signatory Powers will be allowed to adhere to the present Convention after October 1, 1905. For that purpose they will have to make known the fact of their adhesion to the Contracting Powers by means of a written notification addressed to the Government of the Netherlands, which will be communicated by that Government to all the other Contracting Powers.

Art. VI.—In the event of any of the high Contracting Parties denouncing the present Convention, the denunciation shall only take effect after notification has been made in writing to the Government of the Netherlands and communicated by that Government at once to all the other Contracting Powers. Such denunciation shall be effective only in respect of the Power which shall have given notice of it.

(*Translation.*)

At the time of signing the Convention for the exemption of hospital ships in time of war from all dues and taxes, in ports of the Contracting Parties, imposed on ships for the benefit of the State, the Plenipotentiary Ministers signing this Act express the *vœu* that, considering the high humanitarian mission of these ships, the Contracting Governments should take the necessary steps in order to exempt them also, within a short time, from the shipping dues and taxes levied in their ports for the benefit of others than the State, as, for example, those levied for the benefit of municipal authorities, private companies, or private persons, etc.

procès-verbal qui, portant la date de ce jour, pourra être signé jusqu'au premier Octobre 1905.

Fait à La Haye, le vingt et un Décembre mil neuf cent quatre, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances signataires de la Convention précitée.

# CONVENTION SUR LES BÂTIMENTS HOSPITALIERS DU 21 DÉCEMBRE 1904

## TABLEAU DES RATIFICATIONS

| SIGNÉE PAR | RATIFIÉE PAR | ETATS QUI ONT ADHÉRÉ |
|---|---|---|
| Allemagne | le 26 mars 1907 | Guatémala, le 24 mars 1906. |
| Autriche-Hongrie | *id.* | Norvège, le 8 janvier 1907. |
| Belgique | *id.* | |
| Chine | *id.* | |
| Corée | *id.* | |
| Danemark | *id.* | |
| Espagne | pas ratifié jusqu'ici | |
| Amérique | le 26 mars 1907 | |
| Mexique | *id.* | |
| France | le 10 avril 1907 | |
| Grèce | le 26 mars 1907 | |
| Italie | pas ratifié jusqu'ici | |
| Japon | le 26 mars 1907 | |
| Luxembourg | *id.* | |
| Monténégro | *id.* | |
| Pays-Bas | *id.* | |
| Pérou | *id.* | |
| Perse | pas ratifié jusqu'ici | |
| Portugal | le 26 mars 1907 | |
| Roumanie | *id.* | |
| Russie | *id.* | |
| Serbie | pas ratifie jusqu'ici | |
| Siam | le 26 mars 1907 | |
| Suisse | *id.* | |

# 3. REVISED GENEVA CONVENTION

## CONVENTION POUR L'AMÉLIORATION DU SORT DES BLESSÉS ET MALADES DANS LES ARMÉES EN CAMPAGNE

*Conclue le 6 juillet 1906*

S. M., etc.

(NOMS DES SOUVERAINS ET CHEFS D'ÉTAT.)

Egalement animés du désir de diminuer, autant qu'il dépend d'eux, les maux inséparables de la guerre et voulant, dans ce but, perfectionner et compléter les dispositions convenues à Genève, le 22 août 1864, pour l'amélioration du sort des militaires blessés ou malades dans les armées en campagne ;

Ont résolu de conclure une nouvelle Convention à cet effet, et ont nommé pour leurs Plénipotentiaires, savoir :

Sa Majesté l'EMPEREUR d'ALLEMAGNE, ROI de PRUSSE :

S. E. M. le chambellan et conseiller intime actuel A. de BÜLOW, envoyé extraordinaire et ministre plénipotentiaire à Berne.

M. le général de brigade baron de MANTEUFFEL,

M. le médecin-inspecteur, médecin général Dr VILLARET (avec rang de général de brigade),

M. le Dr ZORN, conseiller intime de justice, professeur ordinaire de droi tà l'Université de Bonn, syndic de la couronne ;

Son Excellence le PRÉSIDENT de la RÉPUBLIQUE ARGENTINE :

S. E. M. Enrique B. Moreno, envoyé extraordinaire et ministre plénipotentiaire à Berne,

M. MOLINA SALAS, consul général en Suirs ;

Sa Majesté l'EMPEREUR d'AUTRICHE, ROI de BOHEME, etc., et ROI APOSTOLIQUE de HONGRIE :

S. E. M. le baron HEIDLER de EGEREGG et SYRGENSTEIN, conseiller intime actuel, envoyé extraordinaire et ministre plénipotentiaire à Berne ;

Sa Majeste le ROI des BELGES :

M. le colonel d'état-major comte de T'SERCLAES, chef d'état-major de la 4me circonscription militaire ;

Son Altesse Royale le PRINCE de BULGARIE :

M. le Dr Marin ROUSSEFF, directeur du service sanitaire,

M. le capitaine d'état-major Boris SIRMANOFF ;

Son Excellence le PRÉSIDENT de la REPUBLIQUE du CHILI :

M. Agustin EDWARDS, envoyé extraordinaire et ministre plénipotentiaire ;

Sa Majesté l'EMPEREUR de CHINE :

S. E. M. LOU TSENG TSIANG, envoyé extraordinaire et ministre plénipotentiaire à La Haye ;

Sa Majesté le ROI des BELGES, SOUVERAIN de l'État Independant du CONGO :

M. le colonel d'état-major comte de T'SERCLAES, chef d'état-major de la 4me circonscription militaire de Belgique ;

Sa Majesté l'EMPEREUR de CORÉE :

S. E. M. KATO Tsunetada, envoyé extraordinaire et ministre plénipotentiaire du Japon à Bruxelles ;

Sa Majesté le ROI de DANEMARK :

M. LAUB, médecin général, chef du corps des médecins de l'armée ;

Sa Majesté le ROI d'ESPAGNE :

S. E. M. Silverio de BAGUER y CORSI, comte de Baguer, ministre resident ;

Le PRÉSIDENT des ÉTATS-UNIS d'AMÉRIQUE :

M. William Cary SANGER, ancien sous-secrétaire de la guerre des États-Unis d'Amerique,

M. le contre-amiral Charles-S. SPERRY, president de l'ecole de guerre navale,

M. le général de brigade Georges-B. DAVIS, avocat général de l'armée,

M. le général de brigade Robert-M. O'REILLY, médecin général de l'armée ;

Le PRÉSIDENT des ÉTATS-UNIS du BRÉSIL :

M. le Dr Carlos LEMGRUBER-KROPF, chargé d'affaires à Berne,

M. le colonel du génie Roberto TROMPOWSKI LEITAO d'ALMEIDA, attaché militaire à la légation du Brésil à Berne ;

Le PRÉSIDENT des ÉTATS-UNIS MEXICANS :

M. le général de brigade José-Maria PÉREZ ;

Le PRÉSIDENT de la RÉPUBLIQUE FRANÇAISE :

S. E. M. RÉVOIL, ambassadeur à Berne,

M. Louis RENAULT, membre de l'Institut de France, ministre plénipotentiaire, jurisconsulte du ministère des affaires étrangères, professeur à la faculté de droit de Paris,

M. le colonel breveté d'artillerie de réserve OLIVIER,

M. le médecin principal de 2e classe PAUZAT ;

Sa Majesté le ROI du Royaume-Uni de GRANDE-BRETAGNE et d'IRLANDE, EMPEREUR des INDES:

M. le major-général Sir John Charles ARDAGH, K.C.M.G., K.C.I.E., C.B.,

M. le professeur Thomas Erskine HOLLAND, K.C., D.C.L., Sir John FURLEY, C.B.,

M. le lieutenant-colonel William Grant MACPHERSON, C.M.G., R.A.M.C.;

Sa Majesté le ROI des HELLÈNES:

M. Michel KEBEDGY, professeur de droit international à l'Université de Berne;

Le PRÉSIDENT de la RÉPUBLIQUE de GUATÉMALA:

M. Manuel ARROYO, chargé d'affaires à Paris,

M. Henri WISWALD, consul général à Berne, en résidence à Genève;

Le PRÉSIDENT de la RÉPUBLIQUE de HONDURAS:

M. Oscar HŒPFL, consul général à Berne;

Sa Majesté le ROI d'ITALIE:

M. le marquis Roger MAURIGI di CASTEL MAURIGI, colonel dans Son armée, grand officier de Son ordre royal des SS. Maurice et Lazare,

M. le major-général médecin Giovanni RANDONE, inspecteur sanitaire militaire, commandeur de Son ordre royal de la Couronne d'Italie;

Sa Majesté l'EMPEREUR du JAPON:

S. E. M. KATO Tsunetada, envoyé extraordinaire et ministre plénipotentiaire à Bruxelles;

Son Altesse Royale le GRAND-DUC de LUXEMBOURG, DUC de NASSAU:

M. le colonel d'état-major comte de T'SERCLAES, chef d'état-major de la 4$^{me}$ circonscription militaire de Belgique;

Son Altesse Royale le PRINCE de MONTENEGRO:

M. E. ODIER, envoyé extraordinaire et ministre plénipotentiaire de la Confédération suisse en Russie,

M. le colonel MÜRSET, médecin en chef de l'armée fédérale suisse;

Sa Majesté le ROI de NORVÈGE:

M. le capitaine DAAE, du corps sanitaire de l'armée norvégienne;

Sa Majesté la REINE des PAYS-BAS:

M. le lieutenant-général en retraite Jonkheer J. C. C. den BEER POORTUGAEL, membre du Conseil d'État,

M. le colonel A. A. J. QUANJER, officier de santé en chef de 1$^{re}$ classe;

Le PRESIDENT de la RÉPUBLIQUE du PÉROU:
M. Gustavo de la FUENTE, premier secrétaire de la légation du Pérou à Paris;

Sa Majesté Impériale le SCHAH de PERSE:
S. E. M. Samad Khan MOMTAZ-OS-SALTANEH, envoyé extraordinaire et ministre plénipotentiaire à Paris;

Sa Majesté le ROI de PORTUGAL et des ALGARVES, etc.:
S. E. M. Alberto d'OLIVEIRA, envoyé extraordinaire et ministre plénipotentiaire à Berne;
M. José Nicolau RAPOSO-BOTELHO, colonel d'infanterie, ancien député, directeur du Royal collège militaire à Lisbonne;

Sa Majesté le ROI de ROUMANIE:
M. le Dr Sache STEPHANESCO, colonel de réserve;

Sa Majesté l'EMPEREUR de Toutes les RUSSIES:
S. E. M. le conseiller privé de MARTENS, membre permanent du conseil du ministère des affaires étrangères de Russie;

Sa Majesté le ROI de SERBIE:
M. Milan ST. MARKOVITCH, secrétaire général du ministère de la justice,
M. le colonel Dr SONDERMAYER, chef de la division sanitaire au ministère de la guerre;

Sa Majesté le ROI de SIAM:
M. le prince CHAROON, chargé d'affaires à Paris,
M. CORRAGIONI d'ORELLI, conseiller de légation à Paris;

Sa Majesté le ROI de SUÈDE:
M. SÖRENSEN, médecin en chef de la 2e division de l'armée;

Le CONSEIL FÉDÉRAL SUISSE:
M. E. ODIER, envoyé extraordinaire et ministre plénipotentiaire en Russie,
M. le colonel MÜRSET, médecin en chef de l'armée fédérale;

Le PRÉSIDENT de la RÉPUBLIQUE ORIENTALE de l'URUGUAY:
M. Alexandre HEROSA, chargé d'affaires à Paris,

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:[1]

[1] Some of the States made reserves as regards certain articles: China in regard to Articles XXVII. and XXVIII., Great Britain in regard to Articles XXIII., XXVII., and XXVIII., Japan and Corea in regard to Article XXVIII., and Persia in regard to Article XVIII. The declarations made by the plenipotentiaries of these States were as follows:

China: "The Government of Pekin being at the present moment wholly engrossed in the revision of the legislation of the Empire, it will be very difficult for it to undertake the elaboration of new laws before its present work is terminated. In consequence, I hereby declare that I shall sign the new convention under reserve of Articles XXVII. and XXVIII., while hoping that our revised legislation will later on and in due course be completed by the adjunction of a new law of prohibition in conformity with the spirit of the abovesaid clauses."

Great Britain: "The delegates of Great Britain having been unable to adhere to Articles XXIII., XXVII., and XXVIII. of the draft convention, desire nevertheless to record in the minutes the following *vœu*:—They desire that the use of the distinctive sign and name of the Red Cross be, even in time of peace, restricted, by the legislation of each country, to the sanitary service of its armies and the relief societies recognised and regulated by their respective Governments."

Japan and Corea: "The Japanese Government is not disposed at the present moment to undertake the elaboration of a penal military law in application of Article XXVIII. of the convention. It therefore makes a reserve as regards this disposition."

Persia: "The delegation of Persia accepts the convention while reserving the right to employ the Lion and the Sun as a distinctive sign. However, in homage to Switzerland, it declares that the federal colours will be maintained, in the sense that the emblem of the Lion and the Sun for the sanitary service of the army shall be red on a white ground."

The final protocol contains a *vœu* which all the Signatory States have adopted except Japan, Corea, and Great Britain. It is as follows:

"The Conference expresses the wish that, in order to interpret and apply as accurately as possible the Geneva Convention, the Signatory Powers will submit to the Hague Court, if the cases and circumstances allow, the differences which in time of peace may arise between them as regards the interpretation of the said convention."

The first Russian proposal went further in proposing that the contracting States should agree to submit to the Hague Court *all* differences which might arise between them as to the interpretation of the convention, unless circumstances made it impossible.

## Chapitre I.—*Des Blessés et Malades.*

### ARTICLE I.

Les militaires et les autres personnes officiellement attachées aux armées, qui seront blsssés ou malades, devront être respectés et soignés, sans distinction de nationalité, par le belligérant qui les aura en son pouvoir.

Toutefois, le belligérant, obligé d'abandonner des malades ou des blessés à son adversaire, laissera avec eux, autant que les circonstances militaires le permettront, une partie de son personnel et de son matériel sanitaires pour contribuer à les soigner.

### ARTICLE II.

Sous réserve des soins à leur fournir en vertu de l'article précédent, les blessés ou malades d'une armée tombés au pouvoir de l'autre belligérant sont prisonniers de guerre et les règles générales du droit des gens concernant les prisonniers leur sont applicables.

Cependant, les belligérants restent libres de stipuler entre eux, à l'égard des prisonniers blessés ou malades, telles clauses d'exception ou de faveur qu'ils jugeront utiles ; ils auront, notamment, la faculté de convenir :

De se remettre réciproquement, après un combat, les blessés laissés sur le champ de bataille ;

De renvoyer dans leur pays, après les avoir mis en état d'être transportés ou après guérison, les blessés ou malades qu'ils ne voudront pas garder prisonniers ;

De remettre à un État neutre, du consentement de celui-ci, des blessés ou malades de la partie adverse, à la charge par l'État neutre de les interner jusqu'à la fin des hostillités.[1]

### ARTICLE III.

Après chaque combat, l'occupant du champ de bataille prendra des mesures pour rechercher les blessés et pour les faire protéger, ainsi que les morts, contre le pillage et les mauvais traitements.

Il veillera à ce que l'inhumation ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres.

### ARTICLE IV.

Chaque belligérant enverra, dès qu'il sera possible, aux autorités de leur pays ou de leur armée les marques ou pièces militaires d'identité trouvées sur les morts et l'état nominatif des blessés ou malades recueillis par lui.

Les belligérants se tiendront réciproquement au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès survenus parmi les blessés et malades en leur pouvoir. Ils recueilleront tous les objets d'un usage personnel, valeurs, lettres, etc., qui seront trouvés sur les champs de

[1] Compare Article X. of Convention for adapting the Geneva Convention to maritime warfare, p. 247 and note.

bataille ou délaissés par les blessés ou malades décédés dans les établissements et formations sanitaires, pour les faire transmettre aux intéressés par les autorités de leur pays.

ARTICLE V.

L'autorité militaire pourra faire appel au zèle charitable des habitants pour recueillir et soigner, sous son contrôle, des blessés ou malades des armées, en accordant aux personnes ayant répondu à cet appel une protection spéciale et certaines immunités.

Chapitre II.—*Des Formations et Établissements Sanitaires.*

ARTICLE VI.

Les formations sanitaires mobiles (c'est-à-dire celles qui sont destinées à accompagner les armées en campagne) et les établissements fixes du service de santé seront respectés et protégés par les belligérants.

ARTICLE VII.

La protection due aux formations et établissements sanitaires cesse si l'on en use pour commettre des actes nuisibles à l'ennemi.

ARTICLE VIII.

Ne sont pas considérés comme étant de nature à priver une formation ou un établissement sanitaire de la protection assurée par l'article 6 :

1° Le fait que le personnel de la formation ou de l'établissement est armé et qu'il use de ses armes pour sa propre défense ou celle de ses malades et blessés ;

2° Le fait qu'à défaut d'infirmiers armés, la formation ou l'établissement est gardé par un piquet ou des sentinelles munis d'un mandat régulier ;

3° Le fait qu'il est trouvé dans la formation ou l'établissement des armes et cartouches retirées aux blessés et n'ayant pas encore été versés au service compétent.

Chapitre III.—*Du Personnel.*

ARTICLE IX.

Le personnel exclusivement affecté à l'enlèvement, au transport et au traitement des blessés et des malades, ainsi qu'à l'administration des formations et établissements sanitaires, les aumôniers attachés aux armées, seront respectés et protégés en toute circonstance ; s'ils tombent entre les mains de l'ennemi, ils ne seront pas traités comme prisonniers de guerre.

Ces dispositions s'appliquent au personnel de garde des formations et établissements sanitaires dans le cas prévu à l'article 8, n° 2.

ARTICLE X.

Est assimilé au personnel visé à l'article précédent le personnel des Sociétés de secours volontaires dûment reconnues et autorisées par leur Gouvernement, qui sera employé dans les formations et établissements sanitaires des armées, sous la réserve que ledit personnel sera soumis aux lois et règlements militaires.

Chaque État doit notifier à l'autre, soit dès le temps de paix, soit à l'ouverture ou au cours des hostilités, en tout cas avant tout emploi effectif, les noms des Sociétés qu'il a autorisées à prêter leur concours, sous sa responsabilité, au service sanitaire officiel de ses armées.

ARTICLE XI.

Une Société reconnue d'un pays neutre ne peut prêter le concours de ses personnels et formations sanitaires à un belligérant qu'avec l'assentiment préalable de son propre Gouvernement et l'autorisation du belligérant lui-même.

Le belligerant qui a accepté le secours est tenu, avant tout emploi, d'en faire la notification à son ennemi.

ARTICLE XII.

Les personnes désignées dans les articles 9, 10 et 11 continueront, après qu'elles seront tombées au pouvoir de l'ennemi, à remplir leurs fonctions sous sa direction.

Lorsque leur concours ne sera plus indispensable, elles seront renvoyées à leur armée ou à leur pays dans les délais et suivant l'itinéraire compatibles avec les nécessités militaires.

Elles emporteront, alors, les effets, les instruments, les armes et les chevaux qui sont leur propriété particuliére.

ARTICLE XIII.

L'ennemi assurera au personnel visé par l'article 9, pendant qu'il sera en son pouvoir, les mêmes allocations et la même solde qu'au personnel des mêmes grades de son armée.

Chapitre IV.—*Du Matériel.*

ARTICLE XIV.

Les formations sanitaires mobiles conserveront, si elles tombent au pouvoir de l'ennemi, leur matériel, y compris les attelages, quels que soient les moyens de transport et le personnel conducteur.

Toutefois, l'autorité militaire compétente aura la faculté de s'en servir pour les soins des blessés et malades ; la restitution du matériel aura lieu dans les conditions prévues pour le personnel sanitaire, et, autant que possible, en même temps.

ARTICLE XIV.

Les bâtiments et le matériel des établissements fixes demeurent soumis aux lois de la guerre, mais ne pourront être

détournés de leur emploi, tant qu'ils seront nécessaires aux blessés et aux malades.

Toutefois, les commandants des troupes d'opérations pourront en disposer, en cas de nécessités militaires importantes, en assurant au préalable le sort des blessés et malades qui s'y trouvent.

ARTICLE XVI.

Le matériel des Sociétés de secours, admises au bénéfice de la Convention conformément aux conditions déterminées par celle-ci, est considéré comme propriété privée et, comme tel, respecté en toute circonstance, sauf le droit de réquisition reconnu aux belligérants selon les lois et usages de la guerre.

Chapitre V.—*Des Convois d'Évacuation.*

ARTICLE XVII.

Les convois d'évacuation seront traités comme les formations sanitaires mobiles, sauf les dispositions spéciales suivantes :

1° Le belligérant interceptant un convoi pourra, si les nécessités militaires l'exigent, le disloquer en se chargeant des malades et blessés qu'il contient.

2° Dans ce cas, l'obligation de renvoyer le personnel sanitaire, prévue à l'article 12, sera étendue à tout le personnel militaire préposé au transport ou à la garde du convoi et muni à cet effet d'un mandat régulier.

L'obligation de rendre le matériel sanitaire, prévue à l'article 14, s'appliquera aux trains de chemins de fer et bateaux de la navigation intérieure spécialement organisés pour les évacuations, ainsi qu'au matériel d'aménagement des voitures, trains et bateaux ordinaires appartenant au service de santé.

Les voitures militaires, autres que celles du service de santé, pourront être capturées avec leurs attelages.

Les personnel civil et les divers moyens de transport provenant de la réquisition, y compris le matériel de chemin de fer et les bateaux utilisés pour les convois, seront soumis aux règles générales du droit des gens.

Chapitre VI.—*Du Signe Distinctif.*

ARTICLE XVIII.

Par hommage pour la Suisse, le signe héraldique de la croix rouge sur fond blanc, formé par interversion des couleurs fédérales, est maintenu comme emblème et signe distinctif du service sanitaire des armées.

ARTICLE XIX.

Cet emblème figure sur les drapeaux, les brassards, ainsi que sur tout le matérial se rattachant au service sanitaire, avec la permission de l'autorité militaire compétente.

ARTICLE XX.

Le personnel protégé en vertu des articles 9, alinéa 1er, 10 et 11 porte, fixé au bras gauche, un brassard avec croix rouge sur fond blanc, délivré et timbré par l'autorité militaire compétente, accompagné d'un certificat d'identité pour les personnes rattachées au service de santé des armées et qui n'auraient pas d'uniforme militaire.

ARTICLE XXI.

Le drapeau distinctif de la Convention ne peut être arboré que sur les formations et établissements sanitaires qu'elle ordonne de respecter et avec le consentement de l'autorité militaire. Il devra être accompagné du drapeau national du belligérant dont relève la formation ou l'établissement.

Toutefois, les formations sanitaires tombées au pouvoir de l'ennemi n'arboreront pas d'autres drapeaux que celui de la Croix-Rouge, aussi longtemps qu'elles se trouveront dans cette situation.

ARTICLE XXII.

Les formations sanitaires des pays neutres qui, dans les conditions prévues par l'article 11, auraient été autorisées à fournir leurs services, doivent arborer, avec le drapeau de la Convention, le drapeau national du bélligerant dont elles relèvent.

Les dispositions du deuxième alinéa de l'article précédent leur sont applicables.

ARTICLE XXIII.

L'emblème de la croix rouge sur fond blanc et les mots *Croix-Rouge* ou *Croix de Genève* ne pourront être employés, soit en temps de paix, soit en temps de guerre, que pour protéger ou désigner les formations et établissements sanitaires, le personnel et le matériel protégés par la Convention.

Chapitre VII.—*De l'Application et de l'Exécution de la Convention.*

ARTICLE XXIV.

Les dispositions de la présente Convention ne sont obligatoires que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles. Ces dispositions cesseront d'être obligatoires du moment où l'une des Puissances belligérantes ne serait pas signataire de la Convention.

ARTICLE XXV.

Les commandants en chef des armées belligérantes auront à pourvoir aux détails d'exécution des articles précédents, ainsi qu'aux cas non prévus, d'après les instructions de leurs Gouvernements respectifs et conformément aux principes généraux de la présente Convention.

ARTICLE XXVI.

Les Gouvernements signataires prendront les mesures nécessaires pour instruire leurs troupes, et spécialement le personnel protégé, des dispositions de la présente Convention et pour les porter à la connaissance des populations.

Chapitre VIII.—*De la Répression des Abus et des Infractions.*

ARTICLE XXVII.

Les Gouvernements signataires, dont la législation ne serait pas dès à présent suffisante, s'engagent à prendre ou à proposer à leurs législatures les mesures nécessaires pour empêcher en tout temps l'emploi, par des particuliers ou par des sociétés autres que celles y ayant droit en vertu de la présente Convention, de l'emblème ou de la dénomination de *Croix-Rouge* ou *Croix de Genève*, notamment, dans un but commercial, par le moyen de marques de fabrique ou de commerce.

L'interdiction de l'emploi de l'emblème ou de la dénomination dont il s'agit produira son effet à partir de l'époque déterminée par chaque législation et, au plus tard, cinq ans après la mise en vigueur de la présente Convention. Dès cette mise en vigueur, il ne sera plus licite de prendre une marque de fabrique ou de commerce contraire à l'interdiction.

ARTICLE XXVIII.

Les Gouvernements signataires s'engagent également à prendre ou à proposer à leurs législatures, en cas d'insuffisance de leurs lois pénales militaires, les mesures nécessaires pour réprimer, en temps de guerre, les actes individuels de pillage et de mauvais traitements envers des blessés et malades des armées, ainsi que pour punir, comme usurpation d'insignes militaires, l'usage abusif du drapeau et du brassard de la Croix-Rouge par des militaires ou des particuliers non protégés par la présente Convention.

Ils se communiqueront, par l'intermediaire du Conseil fédéral suisse, les dispositions relatives à cette répression, au plus tard dans les cinq ans de la ratification de la présente Convention.

*Dispositions Générales.*

ARTICLE XXIX.

La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à Berne.

Il sera dressé du dépôt de chaque ratification un procès-verbal dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances contractantes.

ARTICLE XXX.

La présente Convention entrera en vigueur pour chaque Puissance six mois après la date du dépôt de sa ratification.

ARTICLE XXXI.

La présente Convention, dûment ratifiée, remplacera la Convention du 22 Août 1864 dans les rapports entre les États contractants.

La Convention de 1864 reste en vigueur dans les rapports entre les Parties qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

ARTICLE XXXII.

La présente Convention pourra, jusqu'au 31 Décembre prochain, être signée par les Puissances représentées à la Conférence qui s'est ouverte à Genève le 11 Juin 1906, ainsi que par les Puissances non représentées à cette Conférence qui ont signé la Convention de 1864.

Celles de ces Puissances qui, au 31 Décembre 1906, n'auront pas signé la présente Convention, resteront libres d'y adhérer par la suite. Elles auront à faire connaître leur adhésion au moyen d'une notification écrite adressée au Conseil fédéral suisse et communiquée par celui-ci à toutes les Puissances contractantes.

Les autres Puissances pourront demander à adhérer dans la même forme, mais leur demande ne produira effet que si, dans le délai d'un an à partir de la notification au Conseil fédéral celui-ci n'a reçu d'opposition de la part d'aucune des Puissances contractantes.

ARTICLE XXXIII.

Chacune des Parties contractantes aura la faculté de dénoncer la présente Convention. Cette dénonciation ne produira ses effets qu'un an après la notification faite par écrit au Conseil fédéral suisse; celui-ci communiquera immédiatement la notification à toutes les autres Parties contractantes.

Cette dénonciation ne vaudra qu'à l'égard de la Puissance qui l'aura notifiée.

EN FOI DE QUOI, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à Genève, le six Juillet mil neuf cent six, en un seul exemplaire, qui restera déposé dans les archives de la Confédération suisse, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

[*Signatures.*]

# PROTOCOLE FINAL DE LA CONFÉRENCE DE REVISION DE LA CONVENTION DE GENÈVE

La Conférence convoquée par le Conseil fédéral suisse, en vue de la revision de la Convention internationale, du 22 Août 1864, pour l'amélioration du sort des militaires blessés dans les armées en campagne, s'est réunie à Genève le 11 Juin 1906. Les Puissances dont l'énumération suit ont pris part à la Conférence, pour laquelle Elles avaient désignés les Délégués nommés ci-après :

[*Noms des Délégués.*]

Dans une série de réunions tenues du 11 Juin au 5 Juillet 1906, la Conférence a discuté et arrêté, pour être soumis à la signature des Plénipotentiaires, le texte d'une Convention qui portera la date du 6 Juillet 1906.

En outre, et en conformité de l'article 16 de la Convention pour le règlement pacifique des conflits internationaux, du 29 Juillet 1899, qui a reconnu l'arbitrage comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques, la Conférence a émis le VŒU suivant :

La Conférence exprime le vœu que, pour arriver à une interprétation et à une application aussi exactes que possible de la Convention de Genève, les Puissances contractantes soumettent à la Cour permanente de La Haye, si les cas et les circonstances s'y prêtent, les différends qui, en temps de paix, s'élèveraient entre elles relativement à l'interprétation de ladite Convention.

Ce VŒU a été voté par les États suivants :

Allemagne, République Argentine, Autriche-Hongrie, Belgique, Bulgarie, Chili, Chine, Congo, Danemark, Espagne (*ad ref.*), États-Unis d'Amérique, États-Unis du Brésil, États-Unis Mexicains, France, Grèce, Guatémala, Honduras, Italie, Luxembourg, Montenegro, Nicaragua, Norvège, Pays-Bas, Pérou, Perse, Portugal, Roumanie, Russie, Serbie, Siam, Suède, Suisse et Uruguay.

Ce VŒU a été rejeté par es États suivants : Corée, Grande-Bretagne et Japon.

EN FOI DE QUOI, les Délégués ont signé le présent Protocole.

Fait a Genève, le six juillet mil neuf cent six, en un seul exemplaire, qui sera déposé aux archives de la Confédération suisse et dont des copies, certifiées conformes, seront délivrées à toutes les Puissances représentées à la Conférence.

[*Signatures.*]

# 4. RECOMMENDATIONS OF THE JUDGES OF THE HAGUE COURT IN THE "PIOUS FUND" CASE

La Haye, *le* 14 *Octobre* 1902.

Monsieur le Ministre,—Les soussignés, Membres du Tribunal d'Arbitrage constitué en vertu du Traité de Washington du 22 Mai 1902 entre les États-Unis d'Amérique et les États-Unis Mexicains, ont l'honneur d'adresser à Votre Excellence, en qualité de Président du Conseil administratif de la Cour Permanente d'Arbitrage, cette Note contenant quelques réflexions concernant la procédure à suivre devant la Cour permanente d'Arbitrage. En même temps les soussignés expriment le désir que votre Excellence veuille bien communiquer cette Note à tous les Membres du Conseil Administratif en les priant de la soumettre à la bienveillante attention de leurs Gouvernements.

La Convention signée à la Haye le 22 Juillet 1899, pour le règlement pacifique des conflits internationaux, présente, sans aucun doute, une base juste et rationnelle pour la procédure à suivre devant un Tribunal d'Arbitrage international. Les deux grands États américains qui, en vertu du traité de Washington du 22 Mai 1902, étaient tombés d'accord de faire la première application de la Convention de la Haye concernant la procédure arbitrale pour juger leur conflit relativement au "Fonds Pieux des Californies," pourraient constater que la marche du Tribunal d'Arbitrage, dont nous avons l'honneur d'être les Membres, a été conforme aux stipulations de cet acte.

Le règlement de la procédure arbitrale, élaboré par la Conférence de la Paix, a donné une base solide et des règles pratiques pour la procédure du Tribunal d'Arbitrage entre les États-Unis d'Amérique et les États-Unis Mexicains.

Toutefois désirant contribuer de leurs faibles forces au développement progressif des arbitrages internationaux et prévenir dans l'avenir des difficultés possibles dans la mise en exécution du Réglement de procédure arbitrale, sanctionné par la Convention de la Haye, les soussignés Membres du premier Tribunal d'Arbitrage, qui a siégé à la Haye, se croient moralement obligés de soumettre à la bienveillante attention des Gouvernements intéressés quelques points faciles à régler par des compromis futurs entre des États en litige. Les Arbitres soussignés sont pénétrés du sentiment de leur devoir de contribuer à la meilleure interprétation et exécution de la

Convention de la Haye pour le règlement pacifique des conflits internationaux et de consolider la marche régulière des Tribunaux d'Arbitrage futurs qui seront constitués pour rétablir l' accord et la paix entre des nations.

Il est bien désirable qu'une jurisprudence s'établisse dans le domaine de l'arbitrage international et il est à souhaiter que chaque Tribunal d'Arbitrage futur ajoute une pierre à l'édifice de l'arbitrage international dont les fondements ont été posés par la Conférence de la Haye de 1899.

Tels sont les motifs de notre démarche.

Les observations sur lesquelles nous prenons la liberté d'attirer l'attention des hauts Gouvernements par le gracieux intermédiaire de Votre Excellence, sont les suivantes:

I.

D'après l'article XXII. de la Convention de La Haye, le Bureau International est l'intermédiaire des communications relatives aux réunions de la Cour permanente d'Arbitrage. Les Puissances signataires se sont engagées à communiquer au Bureau International des copies certifiées de toute stipulation d'Arbitrage intervenue entre elles et de toute sentence arbitrale les concernant.

Il est évident que cette obligations existe surtout dans les cas où la Cour permanente d'Arbitrage doit statuer sur un différend survenu entre des Puissances signataires.

Cependant la Convention de la Haye ne précise nullement le mode à observer dans les cas où la Cour Permanente d'Arbitrage est appelée à juger.

En vue de cette circonstance les soussignés émettent le vœu:

Que les Puissances en litige qui sont tombées d'accord pour soumettre leur conflit à la Cour permanente d'Arbitrage, communiquent immédiatement, après la signature du compromis au Bureau International cet acte en le priant de prendre les mesures nécessaires pour l'installation du Tribunal d'Arbitrage;

Que ces mêmes Puissances, après le choix des Arbitres, communiquent sans délai les noms de ceux-ci au Bureau International et enfin;

Que le Bureau International, de son côté, et sans délai, communique aux Arbitres nommés par les Puissances en litige, le compromis signé et les noms des Membres du Tribunal d'Arbitrage déjà désignés.

II.

En vertu des Articles XXXII. et suivants, les Arbitres nommés par les Puissances en litige ont été obligés de choisir le Surarbitre qui, selon l'Article XXXIV. est de droit Président du Tribunal.

Ces stipulations pourraient provoquer des inconvénients qu'il serait utile de prévenir.

Le troisième ou cinquième Membre du Tribunal d'Arbitrage choisi par ses collègues qui sont nommés directement par les Puissances en litige, n'est pas toujours "Surarbitre" dans le sens technique de ce mot. Il est, en premier lieu, le Membre du Tribunal d'Arbitrage qui, par la confiance de ses collègues, est choisi comme leur collègue.

Toutefois le cas pourrait se présenter où ce Membre du Tribunal d'Arbitrage, choisi par ses collègues, refuserait catégoriquement de prendre la présidence du Tribunal pour des motifs absolument personnels, mais parfaitement justifiés. Ce Membre choisi, grâce à sa grande réputation comme jurisconsulte et à sa science profonde, serait éminemment utile comme Membre du Tribunal d'Arbitrage. Mais en vue de son refus absolu de présider aux séances du Tribunal, les autres Membres déjà nommés doivent renoncer à leur choix et priver de cette manière le Tribunal des lumières d'un jurisconsulte ou homme d'État très distingué.

En considération de ces circonstances les soussignés émettent le vœu :

Que les compromis futurs laissent aux Membres du Tribunal d'Arbitrage plein pouvoir pour le choix du Président du Tribunal parmi eux et

Que la nomination du Président du Tribunal d'Arbitrage ait lieu dans la première séance de tous les Membres nommés ou choisis.

## III.

L'Article XXXVIII. de la Convention de La Haye laisse au Tribunal d'Arbitrage le choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

Toute en reconnaissant la haute sagesse de cette stipulation, les soussignés croient nécessaire d'appeler l'attention des Gouvernements en litige sur la nécessité de se mettre d'avance d'accord concernant les langues dans lesquelles ils désirent que les débats devant le Tribunal devraient avoir lieu. Il est absolument nécessaire d'éclaircir ce point avant le commencement des travaux du Tribunal, afin que le choix des Agents et des Conseils se fasse selon leur connaissance de la langue dans laquelle on plaidera devant les Arbitres. La nécessité de traduire, à l'usage des Conseils, des discours, prononcés devant le Tribunal, provoquera inévitablement une grande perte de temps. En vue de ces observations, il est désirable :

Que le choix des Agents et Conseils devant le Tribunal d'Arbitrage se fasse conformément au désir des Puissances en litige concernant les langues à employer devant le Tribunal et

Que les compromis futurs énoncent, sous ce rapport, le désir ou la décision des Puissances contractantes.

IV.

L'Article XXXIX. de la Convention de La Haye stipule que la procédure arbitrale comprend, en règle générale, deux phases distinctes : l'instruction et les débats.

L'instruction consiste dans la communication faite par les Agents respectifs, au Tribunal et à la Partie adverse, de tous actes imprimés ou écrits et de tous documents contenant les moyens invoqués dans la cause.

Cette distinction entre l'instruction et les débats est absolument justifiée et nécessaire. Cependant elle n'est réalisable qu'à la condition que les Parties en litige l'observent en produisant tous les actes et documents avant le commencement des débats. En d'autres mots : l'instruction, en règle générale, doit être finie avant le commencement des débats devant le Tribunal. Seulement, comme une exception rare et dûment légitimée, le Tribunal pourrait encore pendant les débats admettre la production de nouveaux actes ou documents, sous les réserves émises dans les Articles XL. et suivants de la Convention de La Haye.

En considération de ces observations, les soussignés émettent le vœu :

Que la distinction des deux phases savoir l'instruction et les débats soit observée aussi strictement que possible par les Parties en litige ;

Qu'un terme plus long, s'il le faut, soit admis par les Parties pour la communication par l'intermédiaire du Bureau International ou directement aux membres du Tribunal et réciproquement de tous actes et documents ;

Que le Tribunal d'Arbitrage une fois réuni, puisse sans perte de temps procéder aux débats et

Qu'après la clôture des débats, c'est à dire dans le temps qui s'écoule entre la fin des débats et le moment de la prononciation de la sentence arbitrale, aucune communication de la part des Parties en litige de nouveaux actes ou écrits ne saurait être admise.

V.

La Convention de La Haye a reconnu aux Puissances en litige le droit de se réserver dans le compromis de demander la révision de la sentence arbitrale (Article LV.). Cette demande doit être motivée par la découverte "d'un fait nouveau qui eût été de nature à exercer une influence décisive sur la sentence." Le même Tribunal d'Arbitrage qui a jugé la cause est aussi appelé à statuer sur le bien fondé de la demande de révision. Enfin le compromis doit déterminer le délai, dans lequel la demande de révision est admissible.

Cette stipulation pourrait, dans la pratique, provoquer des inconvénients très graves.

Si le délai dans lequel la demande de révision est recevable est très court (comme celui qui a été stipulé dans le dit Protocole de Washington du 22 mai 1902), il n'arrivera que fort rarement qu'un fait nouveau, donnant lieu à la révision, sera découvert en temps utile.

Si, au contraire, on stipule un délai assez long ou bien si l'on accorde le droit de demander toujours la révision, la force obligatoire de la sentence arbitrale restera longtemps ou toujours en suspens.

Ceci ne semble nullement désirable.

En effet, la sentence arbitrale provoquera presque toujours le mécontentement d'une des Parties.

Si ce sentiment n'est pas apaisé dans le plus bref délai par la force de la chose jugée ou du fait accompli, le conflit entre les nations en litige pourrait prendre un caractère aigu menaçant pour la paix internationale.

C'est pourquoi les soussignés émettent le vœu :

Que dans les compromis on ne fasse le moins possible usage de la faculté accordée par l'Article LV. de la Convention de La Haye.

Tels sont, Monsieur Le Ministre, les quelques vœux et observations que nous avons l'honneur de soumettre à Votre haute appréciation avec la respectueuse demande de les faire parvenir à toutes les Puissances signataires de la Convention de La Haye pour le règlement pacifique des conflits internationaux.

Veuillez agréer, Monsieur le Ministre, l'assurance de notre très haute considération.

Henning Matzen.
Edward Fry.
Martens.
T. M. C. Asser.
A. F. De Savornin Lohman.

Son Excellence Monsieur le Baron Melvil de Lynden, Ministre des Affaires Étrangères des Pays-Bas, Président du Conseil Administratif de la Cour permanente d'Arbitrage.

# 5. RECOMMENDATIONS OF THE JUDGES OF THE HAGUE COURT IN THE VENEZUELAN INDEMNITIES CASE

La Haye, *le* 22 *Février* 1904.

Monsieur le Ministre, — Les soussignés, Membres du Tribunal d'Arbitrage, constitué en vertu des Protocoles de Washington du 7 Mai 1903 pour l'affaire Vénézuélienne, se croient moralement obligés, après la clôture finale de cette Affaire par le prononcé de la Sentence arbitrale en séance publique du Tribunal le 22 Février 1904, d'adresser à Votre Excellence cette Note contenant quelques observations, provoquées par la marche de cet Arbitrage. Etant profondément convaincus qu'une jurisprudence solide et rationnelle ne saurait s'établir dans la Cour permanente d'Arbitrage que sur la base de l'expérience accumulée et dûment consignée, les soussignés ont l'honneur de prier Votre Excellence de bien vouloir communiquer cette Note à tous les Membres du Conseil administratif de la Cour permanente d'Arbitrage, qui voudront bien de leur côte avoir l'obligeance de la soumettre à la bienveillante attention de leurs Gouvernements. Il est désirable que les Compromis futurs profitent de l'expérience faite et tiennent compte des difficultés ou inconvénients qui se sont présentés dans l'exécution de la procédure arbitrale, établie par la Convention de La Haye du 29 juillet 1899 et développée par des compromis déjà conclus.

Nous partageons complètement les observations et recommandations faites par nos honorables prédécesseurs M.M. les Arbitres dans l'Affaire des "Fonds Pieux des Californies" et soumises aux hauts Gouvernements par la Note du 14 Octobre 1902, adressée à Votre Excellence.

Les observations sur lesquelles nous prenons la liberté d'attirer la bienveillante attention des Gouvernements signataires de la Convention de La Haye de 1899 par le gracieux intermédiaire de Votre Excellence, sont les suivants :

I.

M.M. les Arbitres dans l'affaire des "Fonds Pieux des Californies" ont déjà attiré l'attention des Gouvernements sur la nécessité que la distinction de deux phases de la procédure arbitrale, savoir l'instruction et les débats soit observée aussi strictement que possible par les Parties en litige, afin que le Tribunal arbitral une fois réuni, puisse sans perte de temps procéder aux débats.

Les soussignés, en appuyant fortement cette recommandation,

ont l'honneur d'ajouter que, d'après leur conviction, les débats devant le Tribunal gagneront sans aucun doute, relativement au fond et à la forme, si un laps de temps nécessaire s'est écoulé entre la fin de l'instruction et le commencement des plaidoiries, dont la grande valeur pour l'éclaircissement approfondi de l'affaire en litige ne saurait être mise en doute. Les débats sont aussi indispensables que l'instruction écrite, savoir l'échange réciproques des mémoires, actes ou documents, entre les Parties en litige. Toutefois il est à désirer que cet échange ait lieu avant la réunion du Tribunal dans des termes fixés par les Puissances signataires du compromis.

Partant les soussignés émettent le vœu :

Que l'instruction de l'affaire arbitrale soit achevée avant la réunion du Tribunal compétent à la juger dans l'ordre et les délais fixés par le compromis, et

Que l'interruption des débats par la nécessité d'un échange des mémoires, actes ou documents ne soit admise qu'en cas de force majeure et de circonstances absolument imprévues.

II.

Les trois Conseils du Vénézuéla, dans une Note du 3 Septembre 1903,[1] adressée aux Membres du Conseil administratif, ainsi qu'aux Membres du Tribunal d'Arbitrage, attirent leur sérieuse attention sur les inconvénients de la nomination des Membres de la Cour permanente d'Arbitrage, comme Délégués ou Conseils auprès du Tribunal d'Arbitrage.

[1] Voir Annexe I.

Les Représentants du Gouvernement vénézuélien présument que les relations personnelles existant entre les Membres de la Cour permanente d'Arbitrage pourraient avoir une certaine influence sur la marche et l'issue finale du procès. L'autorité scientifique d'un Membre de la Cour permanente d'Arbitrage pourrait lui créer une position prédominante dans le cas où il est chargé de représenter devant le Tribunal d'Arbitrage son Gouvernement. De plus comme le membre de la Cour permanente d'Arbitrage qui représentait dans une affaire son Gouvernement, en qualité d'Agent, pourrait dans une autre cause agir comme Arbitre, la crainte pourrait surgir que l'impartialité des Arbitres et de la sentence à prononcer ne fût sérieusement compromise, parce que celui qui était hier conseil et obtint une sentence favorable pourrait siéger aujourd'hui en qualité de juge et le juge d'hier parait devant lui comme conseil.

Telle est l'argumentation de la Note Vénézuelienne ci-annexée contre le choix par les Gouvernements en litige de leurs agents, conseils ou avocats dans la liste des Membres de la Cour permanente d'Arbitrage.

Cette argumentation trouva un fort appui de la part du

Gouvernement de Sa Majesté Britannique. Sir Henry Howard, par une Note 30 Septembre 1903,[1] adressée à Monsieur le Secrétaire Général de la Cour permanente d'Arbitrage, posa catégoriquement la question: si les membres de la Cour permanente d'Arbitrage pourraient être admis comme agents, conseils ou avocats devant un Tribunal d'Arbitrage? Le Gouvernement Britannique résolut sans hésitation cette question dans le sens négatif, ne pouvant pas admettre que "les Membres de la Cour permanente puissent continuellement être appelés à fonctionner comme juges à l'égard des intérêts de ceux qui étaient dans un passé non lointain leurs clients ou pourraient devenir leurs clients dans un avenir prochain?"

[1] Voir Annexe II.

En vertu de ses instructions le Ministre d'Angleterre protesta formellement contre la nomination par le Gouvernement de la République française de M. Louis Renault, Membre de la Cour permanente d'Arbitrage, comme son agent auprès du Tribunal d'Arbitrage, constitué en vertu des Protocoles du 7 Mai 1903, signés à Washington. La protestation du Gouvernement du Vénézuéla ne pouvait avoir en vue que le même cas.

Le Gouvernement de la République française n'accepta point ni les protestations, ni l'argumentation des Gouvernements Britannique et Vénézuélien. Par la Note du 3 Novembre 1903[2] il déclara catégoriquement que la désignation de M. Renault, comme son agent devant le Tribunal d'Arbitrage, est conforme à son droit et que personne, surtout parmi "les autres plaideurs n'a qualité pour la contester." Le Gouvernement de la République française affirma "en toute confiance qu'en désignant M. Louis Renault comme son agent qu'il n'a pas exercé seulement un droit absolu et qu'il ne s'est nullement écarté des intentions exprimées par ceux des négociateurs de la Convention de La Haye qui auraient voulu dans une certaine mesure établir des incompatibilités."

[2] Voir Annexe III.

Les Arbitres soussignés n'avaient aucune compétence pour trancher ce conflit d'opinions. Ils ont pris connaissance des Notes ci-annexées, mais ils n'avaient aucun mandat pour prendre une décision dans cette question vu que ni la Convention de La Haye du 29 Juillet 1899, ni les Protocoles du 7 Mai 1903 ne contiennent aucune prohibition aux Parties en litige de faire librement leur choix pour la nomination des agents, conseils ou avocats. Au contraire, ils se croient obligés de constater qu'à la Conférence de La Haye de 1899, M. Holls, délégué des États-Unis d'Amérique, en soulevant la question des incompatibilités, rédigea lui même sa proposition dans les termes suivants: "Aucun Membre de la Cour permanente d'Arbitrage ne pourra, pendant la durée de son mandat, accepter les fonctions d'agent, avocat ou conseil d'un Gouvernement autre que le sien propre ou celui qui l'a nommé membre de la Cour."[3]

[3] *Conference Int. de la Paix*, IVme Partie, p. 198; 1re Partie, p. 133.

Enfin, pendant la discussion de l'Article VIII. de la Convention de La Haye, les partisans de l'incompatibilité générale entre les fonctions de Membre de la Cour permanente d'Arbitrage et celle d'agent spécial on avocat près cette Cour, ont fait spécialement exception, "pour le cas ou il s'agit, pour un membre de la Cour, de représenter comme avocat ou agent spécial le pays qui l'a nommé."

Dans ces conditions les soussignés, après avoir exposé impartialement l'état de la question soulevée, constatent le droit illimité des Puissances en litige relativement au choix de leurs agents, conseils ou avocats auprès des Tribunaux d'Arbitrage issus de la Cour permanente d'Arbitrage de La Haye. Ce n'est que par voie diplomatique et en suite d'un nouvel accord formel que ce droit pourrait être limité ou aboli.

Toutefois, les soussignés émettent l'opinion,

Que les Puissances signataires de la Convention de La Haye du 29 Juillet 1899, prennent en sérieuse considération la question ci-dessus traitée en tenant compte de la grande différence existant entre le cas où les fonctions d'agent, conseil ou avocat se cumulent avec les fonctions de Membre de la Cour permanente d'Arbitrage au bénéfice de l'État qui l'a nommé, et l'autre cas où ses fonctions d'agent de conseil ou d'avocat sont acceptées par un Membre de la Cour permanente au profit d'un État étranger.

## III.

En vertu de l'Article XXIX. de la Convention de La Haye, "les frais du Bureau International de La Haye seront supportés par les Puissances signataires dans la proportion établie pour le Bureau Internationale de l'Union postale." Les ressources qui, conformément à cet article sont mises à la disposition du Bureau International suffisent strictement pour couvrir les dépenses ordinaires du Bureau et de son personnel. Mais il n'a aucun fonds de réserve pour faire face aux dépenses extraordinaires et non prévues dans son budget annuel. Cependant chaque recours des Puissances à la Cour permanente afin de constituer un Tribunal d'Arbitrage occasionne des dépenses imprévues.

L'Article LVIII. de la Convention de La Haye impose à chacune des Parties en litige de supporter ses propres frais et une part égale des frais du Tribunal. Ces frais de l'arbitrage sont réglés à la fin de la procédure arbitrale conformément à l'article ci-dessus où bien en exécution de la sentence arbitrale prononcée.

Cependant, il y a des dépenses — quelquefois même très considérables—qui s'imposent, tant avant que pendant le procès, et pour lesquelles le Bureau International qui, d'après l'Article

22 de la Convention, sert de greffe au Tribunal d'Arbitrage, ne dispose d'aucunes ressources.

Ainsi, la question de l'opportunité de publier régulièrement des compte-rendus sténographiés des plaidoiries s'est elle préentée cette fois avec insistance et les soussignés sont da'vis qu'il aurait été très désirable que les débats eussent été sténographiés en anglais et en français.

Certaines Parties avaient, à la vérité engagé des sténographes pour leur compte et elles ont bien voulu faire part de ces rapports aux Membres du Tribunal, mais ces communications ont ét forcément incomplètes et irrégulières.

Il est évident que cet état de choses est peu digne du Tribunal d'Arbitrage et très peu convenable pour les Arbitres et même les Parties intéressées.

En vue de ces considérations les soussignés émettent le vœu :

Qu'avant la signature du compromis, par lequel le litige est référé au jugement du Tribunal d'Arbitrage, le Puissances en litige fixent une certaine somme qui sera immédiatement mise à la disposition du Bureau International pour couvrir les dépenses nécessitées par la marche de l'arbitrage.

Il est évident que cette somme devrait être incluse dans les frais du Tribunal d'Arbitrage, dont la répartition aura lieu en vertu du compromis ou de la Convention de La Haye du 29 Juillet 1899.

Tels sont, Monsieur le Ministre les quelques vœux et observations que nous avons l'honneur de soumettre à Votre haute appréciation avec la respectueuse demande de les faire parvenir à toutes les Puissances signataires de la Convention de La Haye pour le réglement pacifique des conflits internationaux.

Veuillez agréer, Monsieur le Ministre, l'assurance de notre très haute considération.

(Signé) N. Mourawieff.
H. Lammasch.
Martens.

A Son Excellence Monsieur le Baron Melvil de Lynden, Ministre des Affaire Étrangères des Pays-Bas, President du Conseil Administratif de la Cour permanente d'Arbitrage à La Haye.

# 6. OFFICIAL CORRESPONDENCE AS TO JUDGES OF THE HAGUE COURT ACTING AS ADVOCATES IN CASES BEFORE IT, ETC.

THE HAGUE, *September* 3, 1903.

GENTLEMEN,—Our great anxiety to render any service in our power to the continued usefulness of the High Tribunal whose administrative business has been confided to your hands, and our conviction that such usefulness is in great danger of being inadvertently imperilled, is our excuse for addressing to you this communication. As Venezuela has no diplomatic representative at the Court of Her Majesty, the Queen of the Netherlands, we are obliged to address this communication directly to you. If Venezuela were so represented, we should, of course, address you through the usual diplomatic channel.

Your Excellencies are well aware, without any representations from us, of the very great interest taken by all the American Republics in the Court for whose successful administration you have become responsible. While the South American Republics were not invited to attend the Conference, they have acted with great promptness in availing themselves of the privilege the Powers afforded to them; and in pursuance of their uniform political history since they attained their independence they are, we feel sure, extremely anxious that this Court should fulfil the high expectations entertained of it as a great international court of arbitration and of peace. To succeed in attaining that most desirable end, we beg to submit with the greatest respect and deference to Your Excellencies that it will be necessary to preserve unimpared the right of all independent nations, wishing to invoke the good offices of this High Court, to declare for themselves in what manner they are willing to avail themselves of such offices. It follows, therefore, that the stipulations into which they enter as between themselves and which they make obligatory as to adhering parties, must be regarded as final and conclusive, and must consequently be duly respected.

It is not necessary that we should point out to Your Excellencies how fatal it would be to the future usefulness of this Tribunal if, after the parties proposing to invoke its good offices have themselves defined the conditions upon which those offices are invoked, they find on arriving at The Hague that their stipulations have been disregarded. In saying this we, of course, disclaim the slightest intention to impute any want of good faith to anybody, and our only desire is to guard against such misadventure as might result from an insufficient attention to the provisions of the protocols submitting the cause for arbitration.

You will permit us the liberty of saying that entertaining

these views we have been disappointed in not finding a strict observance of both the letter and the spirit of the provisions of the protocols dated May 7th, 1903, regulating the arbitration between Great Britain, Germany, and Italy and Venezuela.

These protocols contain certain stipulations, without which it is due to frankness to declare the cause would not have been submitted to this Court.

The first of these which it is at present necessary to consider is the one offering to any creditor nation of Venezuela the privilege of joining in the arbitration. It is only necessary to read the language of the provision itself to see that no doubt whatever can arise as to the obligation of any creditor nation availing itself of that privilege to do so subject to the provisions of the protocols themselves. It seems to us the orderly procedure would have been for the Secretary General to have recorded the names of the representatives of *the parties to the protocols*, then have stated what other nations had adhered to the protocols, in accordance with their provisions in the order of time of such adherence—recording only the names of any representatives of any nation which had so adhered.

The other provision in the protocols, respect for which is equally indispensable, is that which declares: "The proceedings shall be carried on in the English language." There is not the slightest ambiguity about these words, but to our surprise the first step in the proceedings was the issuance of a formal notice to counsel in the French language. No doubt this was a mere inadvertence, and we have no desire to lay any stress upon it, and what followed were probably also inadvertencies, but they were none the less violations of the provisions of the protocols.

In requesting that respect be paid to this provision of the protocols, we think we are asking what is unquestionably in the interest of the Tribunal committed to your care. The English language is prescribed in the protocols as the official language of the proceedings; and surely, therefore, it becomes the duty of the international Bureau of the Tribunal when such protocols are filed with it to respect their provisions in that regard. In saying this we are well aware that the 38th Article of the First Convention of The Hague Conference provided: "The Tribunal shall decide upon the choice of the language used by itself or to be authorised for use before it"; but that provision is a part of the third chapter on arbitral procedure, and is subject to the preceding 30th Article, which provides that "with a view to encouraging the development of arbitration the Signatory Powers have agreed upon the following rules which shall be applicable to the arbitral procedure unless the parties have agreed upon different regulations"; and the whole

chapter on arbitral procedure is subject to the preceding 20th Article, providing for the organisation of the Court, which declares that "with the object of facilitating immediate recourse to arbitration for international differences which could not be settled by diplomatic methods, the Signatory Powers undertake to organise a Permanent Court of Arbitration accessible at all times and acting, unless otherwise stipulated by the parties, in accordance with the rules of procedure included in the present convention."

It will therefore be seen that the members of the Conference in their anxiety to induce parties to submit their disputes to this Court not only once, but twice, emphatically, and in unmistakable terms, invited the parties to such arbitration to regulate the procedure themselves.

It happened, however, that notwithstanding this anxiety on the part of the members of the Conference, the parties to the first arbitration here did not avail themselves of their right to designate the language to be used in their protocol, and all five of the distinguished arbitrators in that cause united in earnestly advising that all future protocols should determine the language to be used. They said: "The undersigned deem it necessary to bring the attention of the Governments in litigation to the necessity of arriving at an agreement beforehand with regard to the language they may desire the discussions before the Court to take place in. It is absolutely necessary that the point be made clear prior to the commencement of the labour of the Tribunal, in order that the selection of the Agent and Counsel may be made with a view to their knowledge of the language in which the pleadings before the arbitrators are to be made. The necessity of translating for the use of the Counsel the speeches made before the Tribunal, inevitably provokes a great loss of time. In view of these observations it is desirable:

"That the choice of the Agent and Counsel before the Arbitral Tribunal be made in conformity with the wishes of the Powers in litigation as to the language to be used before the Tribunal; and

"That future compromises shall state the desire or decision of the contracting Powers in this regard."

When the present protocols were being prepared, the parties were confronted with that earnest recommendation which had the unanimous concurrence of the eminent international jurists then composing the Arbitral Tribunal, Mr. Henning Matzen, Sir Edward Fry, M. de Martens, M. Asser, and M. de Savornin Lohman.

In conformity with that unanimous recommendation on the part of those distinguished members of the Permanent Court the protocols now on file with the Secretary General were

framed; and the protocols clearly contemplated the appointment of arbitrators whom the counsel should address in the language that had been agreed upon by the parties, and Venezuela was governed by this consideration in the selection of her Counsel.

Your Excellencies will therefore appreciate that it is not in any narrow or exclusive spirit, or with a desire to make the slightest technical objection, that we feel constrained to invoke respect for that provision of the protocols not only as our undoubted right, but also as a condition precedent to our usefulness as Counsel for Venezuela.

There is another grave matter of administration, which as friends of the Permanent Court and deeply interested in its future usefulness and success, we feel obliged to bring to your serious attention. It relates to the objections which inevitably arise to the appearance of Members of the Permanent Court as Counsel at its bar. Those objections seem to us so obvious as to require mere mention, and we content ourselves with alluding to only two of them. Such persons, owing to their presumed acquaintance with other Members of the Tribunal in advance of its meeting, and of their presumed fitness to express weighty opinions upon questions of international law as attested by their appointment upon the Permanent Court, might be supposed to possess certain advantages over Counsel not so situated, and this conviction might lead litigants to suppose that a proper protection of their interests required them to retain some Member of the Court as Counsel in a given case. The second objection is even more serious,—that suspicion might attach itself to the proceedings before the Court, and that a decision in favour of a Member of the Court acting Counsel in one instance might exert some weight when the gentleman who was Counsel yesterday and received a favourable decision is himself a Judge to-day, and the Judge of yesterday is appearing as Counsel before him.

While we are aware that it is not within your competence to decide this question, yet having in view the unmeasured importance of the subject to the prestige and high reputation of the Court, and the growing esteem for it among all civilised nations, we feel that you will agree with us that we are perfectly justified in entering this our solemn protest against permitting a practice which would assuredly impair the reputation of the Permanent Court for disinterestedness and impartiality.

We beg to repeat that we proffer these suggestions to Your Excellencies in absolute loyalty to the spirit which prompted His Imperial Majesty, the Emperor of Russia, to request the assembling of The Hague Conference, and with an earnest desire to contribute whatever influence we may possess to the

continued growth in usefulness in the world of the principle of international arbitration.—Respectfully yours,

WAYNE MACVEAGH,
HERBERT W. BOWEN,
WILLIAM L. PENFIELD,
*Counsel for Venezuela.*

To their Excellencies,

The Minister of Foreign Affairs of
the Netherlands,
*Ex officio President;*
and the Ministers of
Germany, Austria-Hungary, Belgium, Denmark, Spain, United States of America, Mexico, France, Great Britain, Greece, Italy, Japan, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden, and Norway,
*Ex officio Members of*
*The Administrative Council of the*
*Permanent Court of Arbitration at*
*The Hague.*

BRITISH LEGATION,
THE HAGUE, *September* 30, 1903.

MONSIEUR LE SECRÉTAIRE GÉNÉRAL,—With reference to Your Excellency's letter of the 7th instant communicating a list of the documents received by the International Court of Arbitration in regard to the Tribunal instituted by virtue of the Agreements signed at Washington on the 7th of May last by the Representatives of Great Britain, Germany, Italy and Venezuela, I have the honour to acquaint you that the attention of His Majesty's Government has been drawn to the fact that Monsieur Renault, who is one of the members of the Permanent Court, has been appointed to act as leading Counsel for the French Government in the Arbitration now before the Court.

The question whether the members of the Court should be permitted to appear as Advocates before the Tribunal is in the opinion of His Majesty's Government one of great and general importance. They concur in the opinion, which has already been expressed by the leading Venezuelan Counsel, Mr. MacVeagh, in his letter to the Administrative Council of the 3rd instant, that the practice is open to very great objection.

It appears to them of the utmost importance that the impartiality of the members of the Court who may be called

upon to act as Judges should remain beyond all possibility of suspicion, and the force of the objections to their acting as Advocates is greatly increased by the fact that the number of possible litigants is limited, while the questions to be decided will constantly affect the interests of a large number or even of all these litigants. It follows that, unless precautions are taken to guard against such a contingency, members of the Court will continually find themselves called upon to deal as Judges with the interests of those who have been their clients in the not remote past, or may become their clients in the not remote future.

It will be remembered that this point was discussed at the Peace Conference, and that similar views were then expressed, but it was not thought advisable at that time to lay down a rule on the subject.

In the very first case, however, which came before The Hague Tribunal, namely, the Pious Fund of the Californias, the Mexican Government appointed as their Advocate one of the members of the Permanent Court, and the Government of the United States subsequently adopted a similar course in the same case.

The precedent thus created, and the fact that Monsieur Renault proposes to act as Counsel on the present occasion, make it in the opinion of His Majesty's Government desirable that the matter should now be reconsidered, and that formal objection to such a practice should be recorded on their part.

In accordance with the instructions of His Majesty's Government, I have therefore to make a formal protest against the appointment of a member of the permanent Court to act as Counsel in the present Arbitration.

I am at the same time instructed to state explicitly that this protest is recorded on purely general grounds, and that His Majesty's Government entertain the most implicit belief and confidence in Monsieur Renault's personal fairness and impartiality, which indeed permits them with less hesitation to call attention to the matter at the present time.

I need hardly add how fully I desire to associate myself with the sentiments expressed by my Government in this regard.

While asking you to be kind enough to bring this communication to the knowledge of the Administrative Council and also of the Tribunal at the earliest opportunity, I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

HENRY HOWARD.

Son Excellence
MONSIEUR RUYSSENAERS,
Secrétaire général de la
Cour Permanente d'Arbitrage.

Légation de France,
La Haye, *le* 3 *Novembre* 1903.

Monsieur le Secrétaire Général,—Je n'ai pas manqué de transmettre à mon Gouvernement la lettre qui a été adressée, le 30 Septembre dernier, à Votre Excellence par Sir Henry Howard, pour être communiquée aux membres du Conseil administratif de la Cour permanente ainsi qu'aux membres du Tribunal arbitral qui siège actuellement à la Haye. Dans cette lettre, M. le Ministre de la Grande-Bretagne déclare que, conformément aux instructions de son Gouvernement, il proteste contre la désignation d'un membre de la Cour d'arbitrage pour agir comme Conseil dans le ré sent Arbitrage.

Cette protestation a paru au Gouvernement del a République comporter dès maintenant d'expresses réserves de ma part.

C'est après un examen attentif de la question que le Gouvernement de la République a désigné M. Louis Renault pour le représenter devant le Tribunal arbitral chargé de statuer sur le litige né à propos des réclamations contre le Vénzuela. Il a estimé et il estime encore que cette désignation est conforme à son droit et que personne, surtout parmi les autres plaideurs, n'a qualité pour la contester.

D'après l'article 37 de la Convention du 29 juillet 1899, "les Parties ont le droit de nommer auprès du Tribunal des délégués ou agents spéciaux avec la mission de servir d'intermédiaire entre elles et le Tribunal. . . . Elles sont, en outre, autorisées à charger de la défense de leurs droits et intérêts devant le Tribunal des avocats ou conseils nommés par elles à cet effet."

Cet exte laisse aux Parties la plus entière liberté quant aux choix des délégués ou agents spéciaux, conseils ou avocats. Il n'établit aucune incompatibilité et, par suite il y a lieu de se demander à quel titre une Partie serait fondée à faire des observations sur la façon dont une autre Partie a pourvu à la représentation de ses intérêts.

Il convient de remarquer aussi qu'une question d'incompatibilité avait été soulevée dans les discussions qui ont préparé la Convention de 1899 et il n'est pas indifférent de connaître les vues qui avaient été émises à ce sujet.

"D'après le rapport fait au nom du Comité d'examen par le Chevalier Descamps, sir Julian Pauncefote M. Lammasch et M. Holls ont estimé qu'il était important d'établir une incompatibilité générale entre les fonctions de membre de la Cour permanente et celles d'agent spécial ou d'avocat près cette Cour, en faisant exception seulement pour le cas ou il s'agit, pour un membre de la Cour, de représenter comme avocat ou agent spécial le pays qui l'a nommé" (Recueil des Actes de la Conférence de la Paix, i. p. 133). Ainsi les membres du Comite d'examen qui allaient le plus loin dans le sens de l'incompatibilité et parmi lesquels figurait le premier délégué de

la Grande Bretagne, faisaient exception pour le cas ou un membre de la Cour représenterait le pays même qui l'a nomme, ce qui est le cas de M. Louis Renault.

Dans le litige des "fonds pieux de Californie" jugé l'année dernière à la Haye, les deux Parties, les Etats Unis et le Mexique, ont pris comme Conseils deux membres de la Cour d'arbitrage, MM. Bernaert et Descamps, qui n'étaient pas leurs nationaux. Aucune observation n'a été soulevée à ce sujet.

Le Rapport de M. Descamps indique aussi, sur cette même question d'incompatibilité, l'opinion du Comité d'examen : "Le Comité a exprimé l'avis qu'aucun membre de la Cour ne peut, durant l'exercice de ses fonctions comme membre d'un Tribunal arbitral, accepter le mandat d'agent spécial ou d'avocat devant un autre Tribunal arbitral." Le Comité supposait donc deux tribunaux d'arbitrage fonctionnant simultanément et il pensait que le jurisconsulte qui figurerait comme juge dans l'un d'eux ne pourrait en même temps figurer comme agent ou avocat devant l'autre. Mais tel n'est pas le cas actuel, et d'ailleurs cet avis n'a pas été consacré par la Conférence, puisque la Convention ne contient aucune disposition relative aux incompatibilités.

Le Gouvernement de la République peut donc affirmer en toute confiance, qu'en désignant M. Louis Renault comme son agent, il n'a pas exercé seulement un droit absolu, mais qu'il ne s'est nullement écarté des intentions exprimées par ceux des négociateurs de la Convention qui auraient voulu dans une certaine mesure établir des incompatibilités.

Il paraît résulter de la lettre de la Légation britannique à La Haye qu'il serait, au sentiment du Gouvernement anglais, désirable que la question ainsi soulevée fut réexaminée, c'est, à dire dans doute soumise ultérieurement à l'appréciation des Puissances signataires de la Convention de 1899.

C'est reconnaître que pour faire adopter les vues du Gouvernement Britannique, une révision de la Convention serait nécessaire. Le Gouvernement de la République considérant, de son côté, que la question dont il s'agit ne saurait être soulevée que pour l'avenir et par la voie diplomatique, estime nécessaire de formuler aujourd'hui et expressément les présentes réserves en ce qui concerne la communication adressée le 30 septembre dernier par la Légation Britannique au Secrétariat général de la Cour permanente d'Arbitrage.

En vous priant de vouloir bien porter cette lettre à la connaissance du Conseil administratif et du Tribunal, je saisis cette occasion de renouveler à Votre Excellence l'assurance de ma plus haute considération.

(signé) Segur d'Aguesseau.

A Son Excellence
Monsieur Ruyssenaers,
Sec. général de la
Cour Permanente d'Arbitrage.

# 7. DECLARATION OF PARIS

*April* 16, 1856

Les Plénipotentiaires qui ont signé le Traité de Paris du 30 mars 1856, réunis en Conférence,

Considérant :

Que le droit maritime, en temps de guerre, a été, pendant long temps, l'objet de contestations regrettables ;

Que l'incertitude du droitet des devoirs en pareille matière donne lieu, entre les neutres et les belligérants, à des divergences o'dpinion qui peuvent faire naître des difficultés sérieuses et même des conflits ;

Qu'il y a avantage, par conséquent, à établir une doctrine uniforme sur un point aussi important ;

Que les plénipotentiaires assemblés au Congrès de Paris, ne sauraient mieux répondre aux intentions dont leurs Gouvernements sont animés, qu'en cherchant à introduire dans les rapports internationaux des principes fixes à cet égard ;

Dûment autorisés, les susdits plénipotentiaires sont convenus de se concerter sur les moyens d'atteindre ce but, et, étant tombés d'accord, ont arrêté la déclaration solennelle ci-après :

1°. La course est et demeure abolie ;

2°. Le pavillon neutre couvre la marchandise ennemie, à 'exception de la contrebande de guerre ;

3°. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisisable sous pavillon ennemi ;

4°. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Les Gouvernements des Plénipotentiaires soussignés s'engagent à porter cette déclaration à la connaissance des Etats qui n'ont pas été appelés à participer au Congrès de Paris et à les inviter à y accèder.

Convaincus que les maximes qu'ils viennent de proclamer ne sauraient être accueillies qu'avec gratitude par le monde entier, les Plénipotentiaires soussignés ne doutent pas que les efforts de leurs Gouvernements pour en généraliser l'adoption ne soient couronnés d'un plein succès.

La présente déclaration n'est et ne sera obligatoire qu'entre les Puissances qui y ont ou qui y auront accédé.

Fait à Paris, le seize avril mil huit cent cinquante-six.

(Signatures.)

# 8. CONVENTION BETWEEN HER MAJESTY, THE GERMAN EMPEROR, KING OF PRUSSIA, THE KING OF THE BELGIANS, THE KING OF DENMARK, THE PRESIDENT OF THE FRENCH REPUBLIC, AND THE KING OF THE NETHERLANDS, FOR REGULATING THE POLICE OF THE NORTH SEA FISHERIES

*Signed at the Hague, May* 6, 1882.

[*Ratifications deposited at the Hague, May* 15, 1884.]

Sa Majesté etc., ayant reconnu la nécessité de règler la police de la pêche dans la Mer du Nord, en dehors des eaux territoriales, ont résolu de conclure à cet effet une Convention, et ont nommé pour leurs Plénipotentiaires, savoir :

Sa Majesté la Reine du Royaume Uni de la Grande-Bretagne et d'Irlande, l'Honorable William Stuart, Compagnon du Très Honorable Ordre du Bain, &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire à la Haye ; Mr. Charles Malcolm Kennedy, Compagnon du Très Honorable Ordre du Bain, &c., Directeur du Bureau Commercial au Ministère des Affaires Étrangères ; et Mr. Charles Cecil Trevor, Membre du Barreau, Secrétaire-Adjoint au Board of Trade, &c. ;

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, M. Veit Richard von Schmidthals, Chevalier de son Ordre de l'Aigle Rouge de troisième classe, et de l'Ordre de St. Jean, &c., Conseiller de Légation, son Chargé d'Affaires à La Haye ; et M. Peter Christian Kinch Donner, Chevalier de ses Ordres de l'Aigle Rouge de quatrième classe, avec l'Epée et de la Couronne de quatrième classe, &c., son Conseiller d'État, Capitaine de Vaisseau en retraite ;

Sa Majesté le Roi des Belges, M. le Baron d'Anethan, Commandeur de son Ordre de Léopold, &c., son Envoyé Extraordinaire et Ministre Plénipotentiare à La Haye ; et M. Léopole Orban, Commandeur de son Ordre de Léopold, &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire, Directeur-Général de la Politique au Département des Affaires Etrangéres ;

Sa Majesté le Roi de Danemark, M. Carl Adolph Bruun,

(*Translation.*)

HER Majesty etc., having recognised the necessity of regulating the police of the fisheries in the North Sea, outside territorial waters, have resolved to conclude for this purpose a Convention, and have named their Plenipotentiaries etc. etc.

Chevalier de son Ordre du Danebrog, &c., Capitaine de la Marine ;

Le Président de la République Française, M. le Comte Lefèbvre de Béhaine, Commandeur de l'Ordre National de la Légion d'Honneur, &c., Envoyé Extraordinaire et Ministre Plénipotentiaire de la République Française à La Haye ; et M. Gustave Émile Mancel, Officier de l'Ordre National de la Légion d'Honneur, &c., Commissaire de la Marine ;

Sa Majesté le Roi des Pays-Bas, Jonkheer Willem Frederik Rochussen, Commandeur de son Ordre du Lion Néerlandais, &c., son Ministre des Affaires Étrangères ; et M. Eduard Nicolaas Rahusen, Chevalier de son Ordre du Lion Néerlandais, &c. Président du Comité des Pêches Maritimes ;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des Articles suivants :—

ARTICLE I.

Les dispositions de la présente Convention, qui a pour objet de régler la police de la pêche dans la Mer du Nord, en dehors des eaux territoriales, sont applicables aux nationaux des Hautes Parties Contractantes.

ARTICLE II.

Les pêcheurs nationaux jouiront du droit exclusif de pêche dans le rayon de 3 milles, à partir de la laisse de basse mer, le long de toute l'étendue des côtes de leurs pays respectifs, ainsi que des îles et des bancs qui en dépendent.

Pour les baies, le rayon de 3 milles sera mesuré à partir d'une ligne droite, tirée en travers de la baie, dans la partie la plus rapprochée de l'entrée, au premier point où l'ouverture n'excédera pas 10 milles.

Le présent Article ne porte aucune atteinte à la libre circulation reconnue aux bateaux de pêche, naviguant ou mouillant dans les eaux territoriales, à la charge par eux de se conformer aux règles spéciales de police édictées par les Puissances Riveraines.

ARTICLE III.

Les milles mentionnés dans l'Article précédent sont des miles géographiques de soixante au degré de latitude.

ARTICLE IV.

Pour l'application des dispositions de la présente Convention, les limites de la Mer du Nord sont déterminées comme suit :—

1. Au nord par le parallèle du 61e degré de latitude ;

Who, after having communicated the one to the other their full powers, found in good and due form, have agreed upon the following Articles :—

ARTICLE I.

The provisions of the present Convention, the object of which is to regulate the police of the fisheries in the North Sea outside territorial waters, shall apply to the subjects of the High Contracting Parties.

ARTICLE II.

The fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.

As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed 10 miles.

The present Article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the Powers to whom the shore belongs.

ARTICLE III.

The miles mentioned in the preceding Article are geographical miles, whereof sixty make a degree of latitude.

ARTICLE IV.

For the purpose of applying the provisions of the present Convention, the limits of the North Sea shall be fixed as follows :—

1. On the north by the parallel of the 61st degree of latitude ;

2. A l'est et au sud :—

(1) Par les côtes de la Norvège entre le parallèle du 61e degré de latitude et le Phare de Lindesnaes (Norvège) ;

(2) Par une ligne droite tirée du Phare de Lindesnaes (Norvège) au Phare de Hanstholm (Danemark) ;

(3) Par les côtes du Danemark, de l'Allemagne, des Pays-Bas, de la Belgique et de la France jusqu'au Phare de Griz Nez.

3. A l'ouest :—

(1) Par une ligne droite tirée du Phare de Gris Nez (France) au feu le plus est de South Foreland (Angleterre) ;

(2) Par les côtes orientales de l'Angleterre et de l'Écosse ;

(3) Par une ligne droite joignant Duncansby Head (Écosse) à la pointe sud de South Ronaldsha (Iles Orcades) ;

(4) Par les côtes orientales des Iles Orcades ;

(5) Par une ligne droite joignant le feu de North Ronaldsha (Iles Orcades) au feu de Sumburgh Head (Iles Shetland) ;

(6) Par les côtes orientales des Iles Shetland ;

(7) Par le méridien du feu de North Unst (Iles Shetland) jusqu'au parallèle du 61e degré de latitude.

## ARTICLE V.

Les bateaux de pêche des Hautes Parties Contractantes sont enregistrés d'après les règlements administratifs des différents pays. Pour chaque port, il y a une série continue de numéros, précédés d'une ou plusieurs lettres initiales indiquées par l'autorité supérieure compétente.

Chaque Gouvernement établira un Tableau portant indication des dites lettres initiales.

Ce Tableau, ainsi que toutes les modifications qui pourraient y être ultérieurement apportées, devront être notifiés aux autres Puissances Contractantes.

## ARTICLE VI.

Les bateaux de pêche portent la lettre ou les lettres initiales de leur port d'attache et le numéro d'enregistrement dans la série des numéros de ce port.

## ARTICLE VII.

Le nom de chaque bateau de pêche, ainsi que celui du port auquel il appartient, sont peints à l'huile, en blanc sur un fond noir, sur l'arrière de ce bateau, en caractères qui devront avoir au moins 8 centim. de hauteur et 12 millim. de trait.

## ARTICLE VIII.

La lettre ou les lettres et les numéros sont placés sur chaque côté de l'avant du bateau, à 8 ou 10 centim. au-dessous du plat-

2. On the east and south :—

(1) By the coasts of Norway between the parallel of the 61st degree of latitude and Lindesnaes Lighthouse (Norway) ;

(2) By a straight line drawn from Lindesnaes Lighthouse (Norway) to Hanstholm Lighthouse (Denmark) ;

(3) By the coasts of Denmark, Germany, the Netherlands, Belgium, and France, as far as Griz Nez Lighthouse ;

3. On the west :—

(1) By a straight line drawn from Griz Nez Lighthouse (France) to the easternmost lighthouse at South Foreland (England) ;

(2) By the eastern coasts of England and Scotland ;

(3) By a straight line joining Dunscansby Head (Scotland) and the southern point of South Ronaldsha (Orkney Islands) ;

(4) By the eastern coasts of the Orkney Islands ;

(5) By a straight line joining North Ronaldsha Lighthouse (Orkney Islands) and Sumburgh Head Lighthouse (Shetland Islands) ;

(6) By the eastern coasts of the Shetland Islands ;

(7) By the meridian of North Unst Lighthouse (Shetland Islands) as far as the parallel of the 61st degree of latitude.

## ARTICLE V.

The fishing boats of the High Contracting Parties shall be registered in accordance with the administrative regulations of each country. For each port there shall be a consecutive series of numbers, preceded by one or more initial letters, which shall be specified by the superior competent authority.

Each Government shall draw up a list showing these initial letters.

This list, together with all modifications which may subsequently be made in it, shall be notified to the other Contracting Powers.

## ARTICLE VI.

Fishing boats shall bear the initial letter or letters of the port to which they belong, and the registry number in the series of numbers for that port.

## ARTICLE VII.

The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 8 centim. in height and 12 millim. in breadth.

## ARTICLE VIII.

The letter or letters and numbers shall be placed on each bow of the boat,

bord, d'une manière visible et apparente. Ils sont peints à l'huile en couleur blanche sur un fond noir.

Néanmoins, la distance ci-dessus indiquée n'est pas obligatoire pour les bateaux d'un faible tonnage sur lesquels il n'y aurait pas de place suffisante au-dessous du platbord.

Les dimensions de ces lettres et de ces numéros sont, pour les bateaux de 15 tonneaux et au-dessus, de 45 centim. de hauteur sur 6 centim. de trait.

Pour les bateaux au-desssous de 15 tonneaux, ces dimensions sont de 25 centim. de hauteur sur 4 centim. de trait.

La même lettre ou les mêmes lettres et numéros sont également placés sur chaque côté de la grande voile du bateau, immédiatement au-dessus de la dernière bande de ris; ils sont peints à l'huile: en noir, sur les voiles blanches ou tannées; en blanc, sur les voiles noires.

La lettre ou les lettres et numéros portés sur les voiles ont un tiers de plus de dimension dans tous les sens que ceux placés sur l'avant des bateaux.

## ARTICLE IX.

Les bateaux de pêche ne peuvent avoir, soit sur les parois extérieurs, soit sur les voiles, d'autres noms, lettres, ou numéros que ceux qui font l'objet des Articles VI, VII, et VIII de la présente Convention.

## ARTICLE X.

Il est défendu d'effacer, d'altérer, de rendre méconnaissables, de couvrir, ou de cacher, par un moyen quelconque, les noms, lettres, et numéros placés sur les bateaux et sur les voiles.

## ARTICLE XI.

La lettre ou les lettres et le numéro affectés à chaque bateau sont portés sur les canots, bouées, flottes principales, chaluts, grappins, ancres, et en général sur tous les engins de pêche appartenant au bateau.

Ces lettres et ces numéros sont de dimensions suffisantes pour être facilement reconnus. Les propriètaires de filets ou autres instruments de pêche peuvent, en outre, les marquer de tels signes particuliers qu'ils jugent utile.

## ARTICLE XII.

Le patron de chaque bateau doit être porteur d'une pièce officielle, dressée par les autorités compétentes de son pays, qui lui permette de justifier de la nationalité du bateau.

Ce document indique obligatoirement la lettre ou les lettres et le numéro du bateau ainsi que sa description, et le nom ou les noms, ou la raison sociale de son propriétaire.

8 or 10 centim. below the gunwale, and so as to be clearly visible. They shall be painted in white oil colour on a black ground.

The distance above mentioned shall not, however, be obligatory for boats of small burden, which may not have sufficient space below the gunwale.

For boats of 15 tons burden and upwards the dimensions of the letters and numbers shall be 45 centim. in height and 6 centim. in breadth.

For boats of less than 15 tons burden the dimensions shall be 25 centim. in height and 4 centim. in breadth.

The same letter or letters and numbers shall also be painted on each side of the mainsail of the boat, immediately above the close reef, in black oil colour on white or tanned sails, and in white oil colour on black sails.

The letter or letters and numbers on the sails shall be one-third larger in every way than those placed on the bows of the boat.

## ARTICLE IX.

Fishing boats may not have, either on their outside or on their sails, any names, letters, or numbers other than those prescribed by Articles VI, VII, and VIII of the present Convention.

## ARTICLE X.

The names, letters, and numbers placed on the boats and on their sails shall not be effaced, altered, made illegible, covered, or concealed in any manner whatsoever.

## ARTICLE XI.

All the small boats, buoys, principal floats, trawls, grapnels, anchors, and generally all fishing implements, shall be marked with the letter or letters and numbers of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they think proper.

## ARTICLE XII.

The master of each boat must have with him an official document, issued by the proper authority in his own country, for the purpose of enabling him to establish the nationality of the boat.

This document must always give the letter or letters and number of the boat, as well as her description and the name or names of the owner or the name of the firm or association to which she belongs.

ARTICLE XIII.

Il est défendu de dissimuler par un moyen quelconque la nationalité du bateau.

ARTICLE XIV.

Il est défendu à tout bateau de pêche de mouiller, entre le coucher et le lever du soleil, dans les parages où se trouvent établis des pêcheurs aux filets dérivants.

Toutefois, cette défense ne s'applique pas à des mouillages qui auraient lieu par suite d'accidents ou toute autre circonstanc de force majeure.

ARTICLE XV.

Il est défendu aux bateaux arrivant sur les lieux de pêche de se placer ou de jeter leurs filets de manière à se nuire réciproquement ou à gêner les pêcheurs qui ont déjà commencé leurs opérations.

ARTICLE XVI.

Toutes les fois que, pour pêcher avec les filets dérivants, des bateaux pontés et des bateaux non-pontés commenceront en même temps à mettre leurs filets à la mer, ces derniers les jetteront au vent des autres.

Les bateaux pontés doivent, de leur côté, jeter leurs filets sous le vent des bateaux non-pontés.

En général, lorsque des bateaux pontés jettent leurs filets au vent des bateaux non-pontés déjà en pêche, et lorsque des bateaux non-pontés jettent leurs filets sous le vent de bateaux pontés déjà en pêche, la responsabilité des avaries causées aux filets incombe à ceux qui se sont mis en pêche les derniers, à moins qu'ils n'établissent qu'il y a cas de force majeure ou que le dommage ne provient pas de leur faute.

ARTICLE XVII.

Il est défendu de fixer ou de mouiller des filets où tout autre engin de pêche dans les parages où se trouvent établis des pêcheurs aux filets dérivants.

ARTICLE XVIII.

Il est interdit à tout pêcheur d'amarrer ou de tenir son bateau sur les filets, bouées, flottes, ou toute autre partie de l'attirail de pêche d'un autre pêcheur.

ARTICLE XIX.

Lorsque des pêcheurs au chalut se trouvent en vue de pêcheurs aux filets dérivants ou à la ligne de fond, ils doivent prendre les mesures nécessaires pour éviter tout préjudice à ces

ARTICLE XIII.

The nationality of a boat must not be concealed in any manner whatsoever.

ARTICLE XIV.

No fishing boat shall anchor, between sunset and sunrise, on grounds where drift-net fishing is actually going on.

This prohibition shall not, however, apply to anchorings which may take place in consequence of accidents or of any other compulsory circumstances.

ARTICLE XV.

Boats arriving on the fishing grounds shall not either place themselves or shoot their nets in such a way as to injure each other, or as to interfere with fishermen who have already commenced their operations.

ARTICLE XVI.

Whenever, with a view of drift-net fishing, decked boats and undecked boats commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats.

The decked boats, on their part, shall shoot their nets to leeward of the undecked boats.

As a rule, if decked boats shoot their nets to windward of undecked boats which have begun fishing, or if undecked boats shoot their nets to leeward of decked boats which have begun fishing, the responsibility as regards any damages to nets which may result shall rest with the boats which last began fishing, unless they can prove that they were under stress of compulsory circumstances, or that the damage was not caused by their fault.

ARTICLE XVII.

No net or any other fishing engine shall be set or anchored on grounds where drift-net fishing is actually going on.

ARTICLE XVIII.

No fisherman shall make fast or hold on his boat to the nets, buoys, floats, or any other part of the fishing tackle of another fisherman.

ARTICLE XIX.

When trawl fishermen are in sight of drift-net or of long-line fishermen, they shall take all necessary steps in order to avoid doing injury to the latter. Where damage is caused, the responsibility shall lie on the trawlers, unless they

derniers; en cas de dommage, la responsabilité encourue incombe aux chalutiers, à moins qu'ils ne prouvent soit un cas de force majeure, soit que la perte subie ne provient pas de leur faute.

ARTICLE XX.

Lorsque des filets appartenant à des pêcheurs différents viennent à se mêler, il est défendu de les couper sans le consentement des deux parties.

Toute responsabilité cesse si l'impossibilité de séparer les filets par d'autres moyens est prouvée.

ARTICLE XXI.

Lorsqu'un bateau pêchant aux cordes croise ses lignes avec celles d'un autre bateau, il est défendu à celui qui les lève de les couper, à moins de force majeure, et dans ce cas, la corde coupée doit être immédiatement renouée.

ARTICLE XXII.

Sauf les cas de sauvetage et ceux prévus par les deux Articles précédents, il est défendu à tout pêcheur de couper, de crocher, ou de soulever, sous quelque prétexte que ce soit, les filets, lignes, et autres engins qui ne lui appartiennent pas.

ARTICLE XXIII.

Il est interdit d'employer tout instrument ou engin servant exclusivement à couper ou à détruire les filets.

La présence à bord d'engins de cette nature est également défendue.

Les Hautes Parties Contractantes s'engagent à prendre les mesures nécessaires pour en empêcher l'embarquement à bord des bateaux de pêche.

ARTICLE XXIV.

Les bateaux pêcheurs ont à observer les règles générales relatives aux feux, adoptées, ou qui seront adoptées d'un commun accord par les Hautes Parties Contractantes, en vue de prévenir les abordages.

ARTICLE XXV.

Tout bateau de pêche, tout canot, tout objet d'armement ou de gréement de bateau de péche, tout filet, ligne, bouée, flotte, ou instrument quelconque de pêche marqué ou non marqué, qui aura été trouvé ou recueilli en mer doit, aussitôt que possible, être remis aux autorités compétentes dans le premier port de retour ou de relâche du bateau sauveteur.



can prove that they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault.

ARTICLE XX.

When nets belonging to different fishermen get foul of each other, they shall not be cut without the consent of both parties.

All responsibility shall cease if the impossibility of disengaging the nets by any other means is proved.

ARTICLE XXI.

When a boat fishing with long lines entangles her lines in those of another boat, the person who hauls up the lines shall not cut them except under stress of compulsory circumstances, in which case any line which may be cut shall be immediately joined together again.

ARTICLE XXII.

Except in cases of salvage and the cases to which the two preceding Articles relate, no fishermen shall, under any pretext whatever, cut, hook, or lift up nets, lines, or other gear not belonging to him.

ARTICLE XXIII.

The use of any instrument or engine which serves only to cut or destroy nets is forbidden.

The presence of any such engine on board a boat is also forbidden.

The High Contracting Parties engage to take the necessary measures for preventing the embarkation of such engines on board fishing boats.

ARTICLE XXIV.

Fishing boats shall conform to the general rules respecting lights which have been, or may be, adopted by mutual arrangement between the High Contracting Parties with the view of preventing collisions at sea.

ARTICLE XXV.

All fishing boats, all their small boats, all rigging gear or other appurtenances of fishing boats, all nets, lines, buoys, floats, or other fishing implements whatsoever found or picked up at sea, whether marked or unmarked, shall as soon as possible be delivered to the competent authority of the first port to which the salving boat returns or puts in.

Ces autorités informent le Consul ou Agent Consulaire de la nation du bateau sauveteur et de celle du propriétaire des objets trouvés. Elles rendent ces objets aux propriétaires ou à leurs représentants, dès qu'ils ont été réclamés et que les droits des sauveteurs sont dûment garantis.

Les autorités administratives ou judiciaires, selon la législation des différents pays, fixent l'indemnité que les propriétaires doivent payer aux sauveteurs.

Il demeure entendu que cette disposition ne porte aucune atteinte aux Conventions déjà en vigueur sur cette matière et que les Hautes Parties Contractantes se réservent la faculté de régler entre elles, par des arrangements spéciaux, le montant d'une allocation fixe à allouer par filet retrouvé.

Les engins de pêche de toute nature trouvés sans marque sont considérés comme épaves.

ARTICLE XXVI.

La surveillance de la pêche sera exercée par des bâtiments de la marine militaire des Hautes Parties Contractantes; en ce qui concerne la Belgique, ces bâtiments pourront être des navires de l'État, commandés par des capitaines commissionnés.

ARTICLE XXVII.

L'exécution des règles qui concernent le document justificatif de la nationalité, la marque et le numérotage des bateaux, &c., et des engins de pêche, ainsi que la présence à bord des instruments prohibés (Articles VI, VII, VII, IX, X, XI, XII, XIII, et XXIII, § 2), est placée sous la surveillance exclusive des bâtiments croiseurs de la nation du bateau pêcheur.

Toutefois les commandants des bâtiments croiseurs se signaleront mutuellement des infractions aux dites règles commises par les pêcheurs d'une autre nation.

ARTICLE XXVIII.

Les bâtiments croiseurs de toutes les Hautes Parties Contractantes sont compétents pour constater toutes les infractions aux règles prescrites par la présente Convention, autres que celles indiquées dans l'Article XXVII, et tous les délits se rapportant aux opérations de pêche, quelle que soit, d'ailleurs, la nation à laquelle appartiennent les pêcheurs qui commettent ces infractions.

ARTICLE XXIX.

Lorsque les commandants des bâtiments croiseurs ont lieu de croire qu'une infraction aux mesures prévues par la présente Convention a été commise, ils peuvent exiger du patron du bateau auquel une contravention est ainsi imputée d'exhiber la

Such authority shall inform the Consul or Consular Agent of the country to which the boat of the salvor belongs, and of the nation of the owners of the articles found. They [the same authority] shall restore the articles to the owners thereof or to their representatives, as soon as such articles are claimed and the interests of the salvors have been properly guaranteed.

The administrative or judicial authorities, according as the laws of the different countries may provide, shall fix the amount which the owners shall pay to the salvors.

It is, however, agreed that this provision shall not in any way prejudice such Conventions respecting this matter as are already in force, and that the High Contracting Parties reserve the right of regulating, by special arrangements between themselves, the amount of salvage at a fixed rate per net salved.

Fishing implements of any kind found unmarked shall be treated as wreck.

ARTICLE XXVI.

The superintendence of the fisheries shall be exercised by vessels belonging to the national navies of the High Contracting Parties. In the case of Belgium, such vessels may be vessels belonging to the State, commanded by Captains who hold commissions.

ARTICLE XXVII.

The execution of the regulations respecting the document establishing nationality, the marking and numbering of boats, &c., and of fishing implements, as well as the presence on board of instruments which are forbidden (Articles VI, VII, VIII, IX, X, XI, XII, XIII, and XXIII, § 2), is placed under the exclusive superintendence of the cruizers of the nation of each fishing boat.

Nevertheless, the commanders of cruizers shall acquaint each other with any infractions of the above-mentioned regulations committed by the fishermen of another nation.

ARTICLE XXVIII.

The cruizers of all the High Contracting Parties shall be competent to authenticate all infractions of the regulations prescribed by the present Convention, other than those referred to in Article XXVII, and all offences relating to fishing operations, whichever may be the nation to which the fishermen guilty of such infractions may belong.

ARTICLE XXIX.

When the commanders of cruizers have reason to believe that an infraction of the provisions of the present Convention has been committed, they may require the master of the boat inculpated to exhibit the official document

pièce officielle justifiant de sa nationalité. Mention sommaire de cette exhibition est faite immédiatement sur la pièce produite.

Les commandants des bâtiments croiseurs ne peuvent pousser plus loin leur visite ou leur recherche à bord d'un bateau pêcheur qui n'appartient pas à leur nationalité, à moins, toutefois, que cela ne soit nécessaire pour relever les preuves d'un délit ou d'une contravention relative à la police de la pêche.

ARTICLE XXX.

Les commandants des bâtiments croiseurs des Puissances Signataires apprécient la gravité des faits de leur compétence, parvenus à leur connaissance, et constatent le dommage, quelle qu'en soit la cause, éprouvé par les bateaux de pêche appartenant aux Hautes Parties Contractantes.

Ils dressent, s'il y a lieu, procès-verbal de la constatation des faits, telle qu'elle résulte tant des déclarations des parties intéressées que du témoignage des personnes présentes.

Si le cas lui semble assez grave pour justifier cette mesure, le commandant d'un bâtiment croiseur aura le droit de conduire le bateau en contravention dans un port de la nation du pêcheur. Il pourra même prendre à son bord une partie des hommes de l'équipage pour les remettre entre les mains des autorités de la nation du bateau.

ARTICLE XXXI.

Le procès-verbal prévu à l'Article précédent est rédigé dans la langue du commandant du bâtiment croiseur et suivant les formes en usage dans son pays.

Les inculpés et les témoins ont le droit d'y ajouter ou d'y faire ajouter, dans leur propre langue, toute mention ou témoignage qu'ils croiront utile. Ces déclarations devront être dûment signées.

ARTICLE XXXII.

La résistance aux prescriptions des commandants des bâtiments croiseurs chargés de la police de la pêche ou de ceux qui agissent d'après leurs ordres sera, sans tenir compte de la nationalité du croiseur, considérée comme résistance envers l'autorité nationale du bateau pêcheur.

ARTICLE XXXIII.

Lorsque le fait imputé n'est pas de nature grave, mais que néanmoins il a occasionné des dommages à un pêcheur quelconque, les commandants des bâtiments croiseurs peuvent concilier à la mer les intéressés et fixer l'indemnité à payer, s'il y a consentement des parties en cause.

Dans ce cas, si l'une des parties n'est pas en mesure de

establishing her nationality. The fact of such document having been exhibited shall then be endorsed upon it immediately.

The commanders of cruizers shall not pursue further their visit or search on board a fishing boat which is not of their own nationality, unless it should be necessary for the purpose of obtaining proof of an offence or of a contravention of regulations respecting the police of the fisheries.

ARTICLE XXX.

The commanders of the cruizers of the Signatory Powers shall excercise their judgment as to the gravity of facts brought to their knowledge, and of which they are empowered to take cognizance, and shall verify the damage, from whatever cause arising, which may be sustained by fishing boats of the nationalities of the High Contracting Parties.

They shall draw up, if there is occasion for it, a formal statement of the verification of the facts as elicited both from the declarations of the parties interested and from the testimony of those present.

The commander of the cruizer may, if the case appears to him sufficiently serious to justify the step, take the offending boat into a port of the nation to which the fisherman belongs. He may even take on board the cruizer a part of the crew of the fishing boat in order to hand them over to the authorities of her nation.

ARTICLE XXXI.

The formal statement referred to in the preceding Article shall be drawn up in the language of the commander of the cruizer, and according to the forms in use in his country.

The accused and the witnesses shall be entitled to add, or to have added, to such statement, in their own language, any observations or evidence which they may think suitable. Such declarations must be duly signed.

ARTICLE XXXII.

Resistance to the directions of commanders of cruizers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruizer, be considered as resistance to the authority of the nation of the fishing boat.

ARTICLE XXXIII.

When the act alleged is not of a serious character, but has nevertheless caused damage to any fisherman, the commanders of cruizers shall be at liberty, should the parties concerned agree to it, to arbitrate at sea between them, and to fix the compensation to be paid.

Where one of the parties is not in a position to settle the matter at once,

s'acquitter immédiatement, les commandants font signer en double expédition par les intéressés un acte réglant l'indemnité à payer.

Un exemplaire de cette pièce reste à bord du croiseur; l'autre est remis au patron en crédit, afin qu'il puisse au besoin s'en servir devant les Tribunaux du débiteur.

Dans le cas, au contraire, où il n'y aurait pas consentement des parties, les commandants agiront conformément aux dispositions de l'Article XXX.

ARTICLE XXXIV.

La poursuite des délits et contraventions prévus dans la présente Convention aura lieu au nom de ou par l'État.

ARTICLE XXXV.

Les Hautes Parties Contractantes s'engagent à proposer à leurs Législatures respectives les mesures nécessaires pour assurer l'exécution de la présente Convention, et notamment pour faire punir soit de l'emprisonnement, soit de l'amende, soit de ces deux peines, ceux qui contreviendront aux dispositions des Articles VI à XXIII inclusivement.

ARTICLE XXXVI.

Toutes les fois que des pêcheurs de l'un des pays contractants se seront livrés à des voies de fait contre les pêcheurs d'une autre nationalité, ou leur auront causé volontairement des dommages ou des pertes, les Tribunaux du pays auquel appartiendront les bateaux des délinquants seront compétents pour les juger.

La même règle est applicable en ce qui concerne les délits et contraventions prévus par la présente Convention.

ARTICLE XXXVII.

La procédure et le jugement des contraventions aux dispositions de la présente Convention ont toujours lieu aussi sommairement que les lois et règlements en vigueur le permettent.

ARTICLE XXXVIII.

La présente Convention sera ratifiée. Les ratifications seront échangées à La Haye dans le plus bref délai possible.

ARTICLE XXXIX.

La présente Convention sera mise à exécution à partir du jour dont les Hautes Parties Contractantes conviendront.

Elle restera en vigueur pendant cinq années à dater de ce jour et, dans le cas où aucune des Hautes Parties Contractantes

the commanders shall cause the parties concerned to sign in duplicate a formal document specifying the compensation to be paid.

One copy of this document shall remain on board the cruizer, and the other shall be handed to the master of the boat to which the compensation is due, in order that he may, if necessary, be able to make use of it before the Courts of the country to which the debtor belongs.

Where, on the contrary, the parties do not consent to arbitration, the commanders shall act in accordance with the provisions of Article XXX.

ARTICLE XXXIV.

The prosecutions for offences against, or contraventions of, the present Convention shall be instituted by, or in the name of, the State.

ARTICLE XXXV.

The High Contracting Parties engage to propose to their respective Legislatures the necessary measures for insuring the execution of the present Convention, and particularly for the punishment by either fine or imprisonment, or by both, of persons who may contravene the provisions of Articles VI to XXIII inclusive.

ARTICLE XXXVI.

In all cases of assault committed, or of wilful damage or loss inflicted, by fishermen of one of the contracting countries upon fishermen of another nationality, the Courts of the country to which the boats of the offenders belong shall be empowered to try them.

The same rule shall apply with regard to offences against, and contraventions of, the present Convention.

ARTICLE XXXVII.

The proceedings and trial in cases of infraction of the provisions of the present Convention shall take place as summarily as the laws and regulations in force will permit.

ARTICLE XXXVIII.

The present Convention shall be ratified. The ratifications shall be exchanged at the Hague as soon as possible.

ARTICLE XXXIX.

The present Convention shall be brought into force from and after a day to be agreed upon by the High Contracting Parties.

The Convention shall continue in operation for five years from the above day; and, unless one of the High Contracting Parties shall, twelve months

n'aurait notifié douze mois avant l'expiration de la dite période de cinq années son intention d'en faire cesser les effets, elle continuera à rester en vigueur une année et ainsi de suite d'année en année. Dans le cas, au contraire, ou l'une des Puissances Signataires dénoncerait la Convention, celle-ci sera maintenue entre les autres Parties Contractantes, à moins qu'elles ne la dénoncent également.

ARTICLE ADDITIONNEL

Le Gouvernement de Sa Majesté le Roi de Suède et de Norvège aura la faculté d'adhérer à la présente Convention, pour la Suède et pour la Norvège, soit ensemble, soit séparément.

Cette adhésion sera notifiée au Gouvernement des Pays-Bas et par celui-ci aux autres Gouvernements Signataires.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention et y ont apposé leurs cachets.

Fait à La Haye en six exemplaires, le 6 Mai, 1882.

[SIGNATURES.]

*Protocole de Dépôt.*

Conformément à ce qui a été convenu entre leurs Gouvernements respectifs, les Soussignés, Envoyés Extraordinaires et Ministres Plénipotentiaires de Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, de Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, de Sa Majesté le Roi des Belges, et de la République Française, se sont réunis aujourd'hui au Ministère des Affaires Étrangères à La Haye pour procéder avec le Soussigné, Ministre des Affaires Étrangères de Sa Majesté le Roi des Pays-Bas, à l'examen et au dépôt des actes de ratification de la Convention signée à La Haye le 6 Mai, mil huit cent quatre-vingt-deux, ayant pour objet de régler la police de la pêche dans la Mer du Nord, en dehors des eaux territoriales.

Les instruments des actes de ratification ayant été produits et le Ministre des Affaires Étrangères de Sa Majesté le Roi des Pays-Bas ayant produit, outre l'acte de ratification de Sa Majesté le Roi de Danemark que le Ministre des Affaires Étrangères à Copenhague lui a fait parvenir par son office en date du onze Juin, mil huit cent quatre-vingt-trois, l'acte de ratification signé par Sa Majesté le Roi des Pays-Bas, et les dits instruments ayant été examinés et trouvés en bonne et due forme, ces documents ont été remis au Ministre des Affaires Étrangères de Sa Majesté le Roi des Pays-Bas, afin de demeurer déposés dans les archives du Département des Affaires Étrangères à La Haye, ce dépôt devant tenir lieu d'échange des dits actes.

before the expiration of the said period of five years, give notice of intention to terminate its operation, shall continue in force one year longer, and so on from year to year. If, however, one of the Signatory Powers should give notice to terminate the Convention, the same shall be maintained between the other Contracting Parties, unless they give a similar notice.

ADDITIONAL ARTICLE.

The Government of His Majesty the King of Sweden and Norway may adhere to the present Convention, for Sweden and for Norway, either jointly or separately.

This adhesion shall be notified to the Netherlands Government, and by it to the other Signatory Powers.

In witness whereof the Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done at the Hague, in six copies, the 6th May, 1882.

[SIGNATURES.]

(*Translation.*)

In conformity with the agreement arrived at between their respective Governments, the Undersigned, Envoys Extraordinary and Ministers Plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, His Majesty the German Emperor, King of Prussia, His Majesty the King of the Belgians, and the French Republic, met together this day at the Office of the Minister for Foreign Affairs at the Hague, in order to proceed, with the Undersigned, Minister for Foreign Affairs of His Majesty the King of the Netherlands, to the examination and deposit of the instruments of ratification of the Convention signed at the Hague the sixth May, one thousand eight hundred and eighty-two, having for its object the regulation of the police of the fisheries in the North Sea, outside territorial waters.

The instruments of ratification having been produced, and the Minister for Foreign Affairs of His Majesty the King of the Netherlands having produced the instrument of ratification of His Majesty the King of Denmark, which the Minister for Foreign Affairs at Copenhagen had forwarded to him in a note dated the eleventh June, one thousand eight hundred and eighty-three, as well as the instrument of ratification signed by His Majesty the King of the Netherlands, and the said instruments having been examined and found in good and due form, the documents were delivered to the Minister for Foreign Affairs of His Majesty the King of the Netherlands, in order that they might remain deposited in the archives of the Department for Foreign Affairs at the Hague, such deposit being in place of an exchange of the said instruments.

Les Soussignés, Envoyés Extraordinaires et Ministres Plénipotentiares, dûment autorisés par leurs Gouvernements respectifs, et le Soussigné, Ministre des Affaires Etrangères de Sa Majesté le Roi des Pays-Bas, également autorisé tant par Sa Majesté le Roi des Pays-Bas que pour le Gouvernement de Sa Majesté le Roi de Danemark, sont de plus convenus de commun accord que la Convention sera mise en vigueur deux mois après la date du présent Protocole.

En foi de quoi le Plénipotentiaires respectifs l'ont signé et y ont apposé le cachet de leurs armes.

Fait à La Haye le quinzième jour du mois de Mars, de l'an de grâce mil huit cent quatre-vingt-quatre, en six expéditions, dont une sera délivrée à chacun des six Gouvernements.

[Signatures.]

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*Protocole de la Séance tenue le* 15 *Mars*, 1884, *au Ministère des Affaires Étrangères.*

Les Soussignés, Envoyés Extraordinaires et Ministres Plénipotentiaires de Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, de Sa Majesté le Roi des Belges, de la République Française, et de Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, et le Soussigné, Ministre des Affaires Étrangères de Sa Majesté le Roi des Pays-Bas, autorisé à représenter en même temps à cette occasion le Gouvernement de Sa Majesté le Roi de Danemark, s'étant réunis le 15 Mars, 1884, au Ministère des Affaires Étrangères à La Haye, à l'effet de procéder au dépôt des actes de ratification de la Convention signée à La Haye le 6 Mai, 1882, ayant pour objet de régler la police de la pêche dans la Mer du Nord, en dehors des eaux territoriales, et pour signer le Protocole relatif à ce dépôt, le Ministre de France a déclaré que tout en adhérant au terme convenu pour la mise en vigueur de la dite Convention, le Gouvernement de la République maintient la réserve contenue dans l'Article 24 de la Loi du 15 Janvier, 1884, ainsi conçu :—

" La mise en vigueur de la présente Loi sera provisoirement suspendue jusqu'au moment où les autres Puissances Signataires de la Convention du 6 Mai, 1882, auront édicté les pénalités prévues à l'Article XXXV de cette Convention."

Les autres Soussignés ont déclaré lui donner acte de cette déclaration.

[Signatures.]

The Undersigned, Envoys Extraordinary and Ministers Plenipotentiary, duly authorised by their respective Governments, and the Undersigned, Minister for Foreign Affairs of His Majesty the King of the Netherlands, equally authorised by His Majesty the King of the Netherlands and by the Government of His Majesty the King of Denmark, have, moreover, mutually agreed that the Convention shall be put into operation two months after the date of the present Protocol.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at the Hague, the fifteenth day of March in the year of grace one thousand eight hundred and eighty-four, in six copies, of which one shall be delivered to each of the six Governments.

[Signatures.]

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(*Translation.*)

The Undersigned, Envoys Extraordinary and Ministers Plenipotentiary of His Majesty the German Emperor, King of Prussia, His Majesty the King of the Belgians, the French Republic, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the Undersigned, Minister for Foreign Affairs of His Majesty the King of the Netherlands, who is also authorised to represent the Government of the King of Denmark on this occasion, having met together at the Office of the Minister for Foreign Affairs at the Hague on the 15th March, 1884, for the purpose of depositing the instruments of ratification of the Convention signed at the Hague the 6th May, 1882, having for its object the regulation of the police of the fisheries in the North Sea outside territorial waters, and in order to sign the Protocol relative to the said deposition, the Envoy of France stated that while adhering to the time agreed upon for putting the Convention into operation the Government of the Republic maintained the reserve contained in Article 24 of the Law of the 15th January, 1884, thus worded :—

"The carrying into effect of the present Law shall be provisionally suspended up to the time on which the other Signatory Powers of the Convention of the 6th May, 1882, shall have promulgated the penalties stipulated in Article XXXV of the Convention.

The other Undersigned have stated to him that they take note of this declaration.

[Signatures.]

# 9. SEA FISHERIES (SCOTLAND) AMENDMENT ACT, 1885

(48 & 49 Vict. ch. 70).

AN ACT TO AMEND THE LAW RELATING TO SCOTTISH SEA FISHERIES, AND FOR OTHER PURPOSES RELATING THERETO. [*August* 14, 1885.]

WHEREAS it is expedient to amend the Sea Fisheries Act, 1883, in so far as it applies to Scottish Sea Fisheries: etc.

1. This Act may be cited as the Sea Fisheries (Scotland) Amendment Act, 1885, and shall be read and construed along with the Sea Fisheries Act, 1883.

2. This Act shall apply only to Scotland, and to the parts of the Sea adjoining Scotland.

. . . . . .

4. When the Fishery Board for Scotland, hereinafter called the Fishery Board, are satisfied that any mode of fishing *in any part of the sea adjoining Scotland, and within the exclusive fishery limits of the British Islands*, is injurious to any kind of sea fishing within that part, or where it appears to the Fishery Board desirable to make experiments or observations with the view of ascertaining whether any particular mode of fishing is injurious, or for the purposes of fish culture or experiments in fish culture, the Fishery Board may make byelaws for restricting or prohibiting, either entirely or subject to such regulations as may be provided by the byelaw, any method of fishing for sea fish within the said part, during such time or times as they think fit, and may from time to time make byelaws for altering or revoking any such byelaws.

A byelaw under this Act shall not be of any validity until it is confirmed by the Secretary for Scotland.

. . . . . .

# 10. HERRING FISHERY (SCOTLAND) ACT, 1889

(52 & 53 Vict. ch 23).

AN ACT TO AMEND THE HERRING FISHERY (SCOTLAND) ACTS; AND FOR OTHER PURPOSES RELATING THERETO. [*July* 26, 1889.]

1. This Act may be cited as the Herring Fishery (Scotland) Act, 1889.

2. This Act extends only to Scotland, and to the parts of the sea adjoining Scotland.

. . . . . .

5. It shall not be lawful to set or shoot any herring net on any day between sunrise and one hour before sunset on any day between the first day of June and the first day of October, nor between sunrise on Saturday morning and one hour before sunset on Monday evening, on the West Coasts of Scotland between the Points of Ardnamurchan on the north and the Mull of Galloway on the south.

Any person acting in contravention of this section shall be liable, on conviction under the Summary Jurisdiction (Scotland) Acts, to a fine not exceeding for the first offence five pouuds, and for the second or any subsequent offence twenty pounds; and every net set, or attempted to be set, in contravention of this section shall be forfeited, and may be seized and destroyed or otherwise disposed of by any superintendent of the herring fishery or other officer employed in the execution of the Herring Fishery (Scotland) Acts.

6. (1) It shall not be lawful to use the method of fishing known as beam trawling or otter trawling within three miles of low-water mark of any part of the coast of Scotland, nor *within the waters specified in the schedule hereto annexed*, save only between such points on the coast or within such other defined areas as may from time to time be permitted by byelaws of the Fishery Board for Scotland, and subject to any conditions or regulations made by those byelaws. Provided that this section shall not apply to the Solway Firth nor to the Pentland Firth; and provided also, that nothing herein contained shall affect the powers of the Fishery Board under section four of the Sea Fisheries (Scotland) Amendment Act, 1885.

(2) The Fishery Board may from time to time make, alter, and revoke byelaws for the purposes of this section, but a byelaw shall not be of any validity until it is confirmed by the Secretary for Scotland.

(3) Any person who uses any method of fishing in contravention of this enactment or of any byelaw of the Fishery Board, shall be liable, on conviction under the Summary Jurisdiction (Scotland) Acts, to a fine not exceeding five pounds for the first offence, and not exceeding twenty pounds for the second or any subsequent offence; and every net set, or attempted to be set, in contravention of this section shall be forfeited, and may be seized and destroyed or otherwise disposed of by any superintendent of the herring fishery or other officers employed in the execution of the Herring Fishery (Scotland) Acts.

7. (1) The Fishery board may, by byelaw or byelaws, direct that the methods of fishing known as beam trawling and otter trawling shall not be used within a line drawn *from Duncansby Head, in Caithness, to Rattray Point, in Aberdeenshire*, in any area or areas to be defined in such byelaw, and may from time to time make, alter, and revoke byelaws for the purposes of this section, but no such byelaw shall be of any validity until it has been confirmed by the Secretary for Scotland.

(2) Any person who uses any such method of fishing in contravention of any such byelaw shall be liable, on conviction under the Summary Jurisdic-

tion (Scotland) Acts, to a fine not exceeding five pounds for the first offence, and not exceeding twenty pounds for the second or any subsequent offence; and every net set, or attempted to be set, in contravention of any such byelaw may be seized and destroyed or otherwise disposed of as in the sixth section of this Act mentioned.

8. It shall not be lawful to land or to sell in Scotland any fish caught in contravention of this Act, or of any byelaw made thereunder, and all superintendents and other officers employed in the execution of the Herring Fishery (Scotland) Acts are hereby empowered and required to prevent the landing or sale of any fish so caught.

SCHEDULE.

Wigtown Bay, within a line drawn from Great Ross Point, near little Ross Lighthouse, on the east to Isle of Whithorn on the west.

Luce Bay, within a line drawn from a point near Port William on the east to Killyness Point, near Drummore, on the west.

Loch-in-dail, within a line drawn from Rudha na Cathair (Mull of Oe) on the south to the Rhynns, near Rhynns of Islay Lighthouse, on the north.

Loch Snizort, within a line drawn from Vatternish Point on the west to Dunlea on the east.

Broad Bay, within a line drawn from Tolsta Head on the north to Tiumpan Head on the south.

Stornoway Bay, within a line drawn from Kebock Head on the south to Bayble Head on the north.

Thurso Bay, within a line drawn from Brimsness on the west to Dunnet Head on the east.

Sinclair Bay, within a line drawn from Noss Head on the south to Duncansby Head on the north.

Scapa Bay, within a line drawn from St. Mary's Point on the east to Houton Heads on the west.

St. Magnus Bay, within a line drawn from Esha Ness on the north to a point near Sandness on the south.

The waters inside a line drawn from Corsewall Point, in the county of Wigtown, to the Mull of Cantyre, in the county of Argyll.

The waters inside a line from Port Askadel, near Ardnamurchan Point, on the west to Ru-Cisteach, near Arasaig, on the east.

The waters inside a line from Ru-geur, Slate Point, on the South to a point near Ru-an-dunan on the north.

The waters inside a line from Ru-na-uag, Loch Torridon, on the south to a point at Long Island, Gareloch, on the north.

The waters outside Loch Tarbert, Harris, from Toe Head on the south to Camus-Huisnish on the north.

East and west Loch Roag, from Gallon Head on the west to Coul Point on the east.

The waters inside a line from Greenstone Point on the west to a point near Meal-Sgreaton, Ru-Cooygach, on the east.

The waters inside a line from Ru-Stoer on the west to a point at Scourie Bay on the east.

| | |
|---|---|
| Dornoch Firth,<br>Fraserburgh Bay,<br>Montrose Bay,<br>Moray Firth (upper parts of),<br>Aberdeen Bay,<br>Saint Andrew's Bay,<br>Firth of Forth. | All as specified in the existing byelaws of the Fishery Board. |

# 11. SEA FISHERIES REGULATION (SCOTLAND) ACT, 1895

(58 & 59 Vict. ch. 42)

AN ACT FOR THE BETTER REGULATION OF SCOTTISH SEA FISHERIES. [*July* 6, 1895.]

1. This Act may be cited as the Sea Fisheries Regulation (Scotland) Act, 1895, and shall be read along with the Sea Fisheries Acts.

2. This Act shall apply to Scotland only, and to the parts of the sea adjoining Scotland, or within the jurisdiction of the Fishery Board for Scotland.

. . . . . .

8. (1) A fishery district committee may, from time to time, subject to such regulations as may be made in that behalf by the Fishery Board, impose penalties, and also make byelaws to be observed within their district, for all or any of the following purposes, namely,—

(*a*) For restricting or prohibiting, either absolutely or subject to such regulations as may be provided by the byelaws, any method of fishing, for sea fish or the use of any instrument of fishing for sea fish, and for determining the size of mesh, form, and dimensions of any instrument of fishing for sea fish ;

. . . . . .

9. (1) The Fishery Board may, by byelaw or byelaws, direct that the method of fishing known as seine trawling shall not be used in any area or areas within the limits specified in section six of the Herring Fishery (Scotland) Act, 1889, or in the schedule annexed to that Act, as defined in such byelaw, and may from time to time make, alter, and revoke byelaws for the purposes of this section.

(2) Any person, who uses such method of fishing in contravention of any such byelaw, shall be liable, on summary conviction, to a fine not exceeding five pounds for the first offence, and not exceeding twenty pounds for the second or any subsequent offence ; and every net set, or attempted to be set, in contravention of any such byelaw, may be seized and destroyed or otherwise disposed of by any superintendent of the herring fishery or other officers employed in the execution of the Herring Fishery (Scotland) Acts. Provided always that, if no conviction shall follow, any net so seized shall be forthwith returned, and due compensation shall be made for any loss or damage occasioned thereto by such seizure.

10. (1) The Fishery Board may, by byelaw or byelaws, direct that the methods of fishing known as beam trawling and otter trawling shall not be used in any area or areas under the jurisdiction of Her Majesty, within thirteen miles of the Scottish coast, to be defined in such byelaw, and may from time to time make, alter, and revoke byelaws for the purposes of this section. Provided that the powers conferred in this section shall not be exercised in respect to any areas under Her Majesty's jurisdiction lying opposite to any part of the coasts of England, Ireland, or the Isle of Man, within thirteen miles thereof.

(2) No byelaw under this section shall be confirmed by the Secretary for Scotland until he shall have directed a local inquiry to be held in the district adjoining the part of the sea to be included in the byelaw ; at which inquiry all persons interested shall be heard, whether resident in the district or not ; and notice of such inquiry shall be sent to all committees of sea fishery districts in the United Kingdom.

(3) Provided that no area of sea within the said limit of thirteen miles shall be deemed to be under the jurisdiction of Her Majesty for the purposes of this section unless the powers conferred thereby shall have been accepted

as binding upon their own subjects with respect to such area by all the States signatories of the North Sea Convention, 1882.

19. (1) A fishery district committee may appoint such fishery officers as they deem expedient for the purpose of enforcing the observance within their district of byelaws made by the committee, provided that nothing in this section shall exempt the coastguard and Admiralty officers from their statutory duty in enforcing the law and regulations affecting vessels engaged in sea fishing.

(2) For the purpose of enforcing those byelaws every such fishery officer may, within the limits of the district, or of any fishery district—

(*a*) stop and search any vessel or vehicle used within the district in fishing or in conveying either fish or any substance, the deposit or discharge of which is prohibited or regulated by any such byelaws; and

(*b*) search and examine all instruments used in catching or carrying fish; and

(*c*) seize any sea fish or instrument liable to be forfeited in pursuance of any such byelaws.

(3) If any person without reasonable excuse (proof whereof shall lie on him) refuses to allow any such officer to exercise the powers conferred on him by this Act, or resists or obstructs any such officer in the performance of his duty, he shall for every such offence be liable, on summary conviction, to a fine not exceeding five pounds.

(4) For the enforcement of the provisions of any such byelaws every such officer shall be deemed to be a police constable, and to have the same powers and privileges, and be subject to the same liabilities, as a police constable duly appointed has and is subject to at common law or by statute.

## 12. SUEZ CANAL

# CONVENTION BETWEEN GREAT BRITAIN, GERMANY, AUSTRIA-HUNGARY, SPAIN, FRANCE, ITALY, THE NETHERLANDS, RUSSIA, AND TURKEY, RESPECTING THE FREE NAVIGATION OF THE SUEZ MARITIME CANAL

*Signed at Constantinople, October, 29, 1888.*

[*Ratifications deposited at Constantinople, December 22, 1888.*]

Au nom de Dieu Tout-Puissant.

Sa Majesté etc., etc., voulant consacrer, par un Acte Conventionnel, l'établissement d'un régime définitif, destiné à garantir, en tout temps et à toutes les Puissances, le libre usage du Canal Maritime de Suez et compléter ainsi le régime sous lequel la navigation par ce Canal a été placée, par le Firman de Sa Majesté Impériale le Sultan, en date du 22 Février, 1866 (2 Zilkadé, 1282,), sanctionnant les Concessions, de Son Altesse le Khédive, ont nommé pour leurs Plénipotentiaires, savoir : etc., etc.

Lesquels, s'étant communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et du forme, sont convenus des Articles suivants :—

### ARTICLE I.

Le Canal Maritime de Suez sera toujours libre et ouvert, en temps de guerre comme en temps de paix, à tout navire de commerce ou de guerre, sans distinction de pavillon.

En conséquence, les Hautes Parties Contractantes conviennent de ne porter aucune atteinte au libre usage du Canal en temps de guerre comme en temps de paix.

Le Canal ne sera jamais assujetti à l'exercise du droit de blocus.

### ARTICLE II.

Les Hautes Parties Contractantes reconnaissent que le Canal d'Eau-Douce est indispensable au Canal Maritime, prennent acte des engagements de Son Altesse le Khédive envers la Compagnie Universelle du Canal de Suez, en ce qui concerne le Canal d'Eau

(*Official Translation.*)

Her Majesty etc., etc., wishing to establish, by a Conventional Act, a definite system destined to guarantee at all times, and for all the Powers, the free use of the Suez Maritime Canal, and thus to complete the system under which the navigation of this Canal has been placed by the Firman of His Imperial Majesty the Sultan, dated the 22nd February, 1866 (2 Zilkadé, 1282), and sanctioning the Concessions of His Highness the Khedive, have named as their Plenipotentiaries, that is to say : etc., etc.

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles :—

### ARTICLE I.

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

Consequently, the High Contracting Parties agree not in any way to interfere with the free use of the Canal, in time of war as in time of peace.

The Canal shall never be subjected to the exercise of the right of blockade.

### ARTICLE II.

The High Contracting Parties, recognising that the Fresh-Water Canal is indispensable to the Maritime Canal, take note of the engagements of His Highness the Khedive towards the Universal Suez Canal Company as regards the Fresh-Water Canal ; which engagements are stipulated in

Douce, engagements stipulés dans une Convention en date du 18 Mars, 1863, contenant un exposé et quatre Articles.

Elles s'engagent à ne porter aucune atteinte à la sécurité de ce Canal et de ses dérivations, dont le fonctionnement ne pourra être l'objet d'aucune tentative d'obstruction.

ARTICLE III.

Les Hautes Parties Contractantes s'engagent de même à respecter le matériel, les établissements, constructions, et travaux du Canal Maritime et du Canal d'Eau-Douce.

ARTICLE IV.

Le Canal Maritime restant ouvert, en temps de guerre, comme passage libre, même aux navires de guerre des belligérants, aux termes de l'Article Ier du présent Traité, les Hautes Parties Contractantes conviennent qu'aucun droit de guerre, aucun acte d'hostilité ou aucun acte ayant pour but d'entraver la libre navigation du Canal ne pourra être exercé dans le Canal et ses ports d'accès, ainsi que dans un rayon de 3 milles marins de ces ports, alors même que l'Empire Ottoman serait l'une des Puissances belligérantes.

Les bâtiments de guerre des belligérants ne pourront, dans le Canal et ses ports d'accès, se ravitailler ou s'approvisionner que dans la limite strictement nécessaire. Le transit des dits bâtiments par le Canal s'effectuera dans le plus bref délai d'après les Règlements en vigueur, et sans autre arrêt que celui qui résulterait des nécessités du service.

Leur séjour à Port-Saïd et dans la rade de Suez ne pourra dépasser vingt-quatre heures sauf le cas de relâche forcée. En pareil cas, ils seront tenus de partir le plus tôt possible. Un intervalle de vingt-quatre heures devra toujours s'écouler entre la sortie d'un port d'accès d'un navire belligérant et le départ d'un navire appartenant à la Puissance ennemie.

ARTICLE V.

En temps de guerre, les Puissances belligérantes ne débarqueront et ne prendront dans le Canal et ses ports d'accès, ni troupes, ni munitions, ni matériel de guerre. Mais, dans le cas d'un empêchement accidentel dans le Canal, on pourra embarquer ou débarquer, dans les ports d'accès, des troupes fractionnées par groupes n'excédant pas 1,000 hommes avec le matériel de guerre correspondant.

ARTICLE VI.

Les prises seront soumises sous tous les rapports au même régime que les navires de guerre des belligérants.

a Convention bearing date the 18th March, 1863, containing an *exposé* and four Articles.

They undertake not to interfere in any way with the security of that Canal and its branches, the working of which shall not be exposed to any attempt at obstruction.

ARTICLE III.

The High Contracting Parties likewise undertake to respect the plant, establishments, buildings, and works of the Maritime Canal and of the Fresh-Water Canal.

ARTICLE IV.

The Maritime Canal remaining open in time of war as a free passage, even to the ships of war of belligerents, according to the terms of Article I of the present Treaty, the High Contracting Parties agree that no right of war, no act of hostility, nor any act having for its object to obstruct the free navigation of the Canal, shall be committed in the Canal and its ports of access, as well as within a radius of 3 marine miles from those ports, even though the Ottoman Empire should be one of the belligerent Powers.

Vessels of war of belligerents shall not revictual or take in stores in the Canal and its ports of access, except in so far as may be strictly necessary. The transit of the aforesaid vessels through the Canal shall be effected with the least possible delay, in accordance with the Regulations in force, and without any other intermission than that resulting from the necessities of the service.

Their stay at Port Saïd and in the roadstead of Suez shall not exceed twenty-four hours, except in case of distress. In such case they shall be bound to leave as soon as possible. An interval of twenty-four hours shall always elapse between the sailing of a belligerent ship from one of the ports of access and the departure of a ship belonging to the hostile Power.

ARTICLE V.

In time of war belligerent Powers shall not disembark nor embark within the Canal and its ports of access either troops, munitions, or materials of war. But in case of an accidental hindrance in the Canal, men may be embarked or disembarked at the ports of access by detachments not exceeding 1,000 men, with a corresponding amount of war material.

ARTICLE VI.

Prizes shall be subjected, in all respects, to the same rules as the vessels of war of belligerents.

## ARTICLE VII.

Les Puissances ne maintiendront dans les eaux du Canal (y compris le Lac Timsah et les Lacs Amers) aucun bâtiment de guerre.

Toutefois, dans les ports d'accès de Port-Saïd et de Suez, elles pourront faire stationner des bâtiments de guerre dont le nombre ne devra pas excéder deux pour chaque Puissance.

Ce droit ne pourra être exercé par les belligérants.

## ARTICLE VIII.

Les Agents en Égypte des Puissances Signataires du présent Traité seront chargés de veiller à son exécution. En toute circonstance qui menacerait la sécurité ou le libre passage du Canal, ils se réuniront sur la convocation de trois d'entre eux et sous la présidence du doyen, pour procéder aux constatations nécessaires. Ils feront connaître au Gouvernement Khédivial le danger qu'ils auraient reconnu afin que celui-ci prenne les mesures propres à assurer la protection et le libre usage du Canal. En tout état de cause, ils se réuniront une fois par an pour constater la bonne exécution du Traité.

Ces dernières réunions auront lieu sous la présidence d'un Commissaire Spécial nommé à cet effet par le Gouvernement Impérial Ottoman. Un Commissaire Khédivial pourra également prendre part à la réunion et la présider en cas d'absence du Commissaire Ottoman.

Ils réclameront notamment la suppression de tout ouvrage ou la dispersion de tout rassemblement qui, sur l'une ou l'autre rive du Canal, pourrait avoir pour but ou pour effet de porter atteinte à la liberté et à l'entière sécurité de la navigation.

## ARTICLE IX.

Le Gouvernement Égyptien prendra dans la limite de ses pouvoirs tels qu'ils résultent des Firmans et dans les conditions prévues par le présent Traité, les mesures nécessaires pour faire respecter l'exécution du dit Traité.

Dans le cas où le Gouvernement Égyptien ne disposerait pas de moyens suffisants, il devra faire appel au Gouvernement Impérial Ottoman, lequel prendra les mesures nécessaires pour répondre à cet appel, en donnera avis aux autres Puissances Signataires de la Déclaration de Londres du 17 Mars, 1885, et, au besoin, se concertera avec elles à ce sujet.

Les prescriptions des Articles IV, V, VII, et VIII ne feront pas obstacle aux mesures qui seront prises en vertu du présent Article.

## ARTICLE X.

De même, les prescriptions des Articles IV, V, VII, et VIII ne feront pas obstacle aux mesures que Sa Majesté le Sultan et

## ARTICLE VII.

The Powers shall not keep any vessel of war in the waters of the Canal (including Lake Timsah and the bitter Lakes).

Nevertheless, they may station vessels of war in the ports of access of Port Saïd and Suez, the number of which shall not exceed two for each Power.

This right shall not be exercised by belligerents.

## ARTICLE VIII.

The Agents in Egypt of the Signatory Powers of the present Treaty shall be charged to watch over its execution. In case of any event threatening the security or the free passage of the canal, they shall meet on the summons of three of their number under the presidency of their Doyen, in order to proceed to the necessary verifications. They shall inform the Khedivial Government of the danger which they may have perceived, in order that that Government may take proper steps to insure the protection and the free use of the Canal. Under any circumstances, they shall meet once a year to take note of the due execution of the Treaty.

The last-mentioned meetings shall take place under the presidency of a Special Commissioner nominated for that purpose by the Imperial Ottoman Government. A Commissioner of the Khedive may also take part in the meeting, and may preside over it in case of the absence of the Ottoman Commissioner.

They shall especially demand the suppression of any work or the dispersion of any assemblage on either bank of the Canal, the object or effect of which might be to interfere with the liberty and the entire security of the navigation.

## ARTICLE IX.

The Egyptian Government shall, within the limits of its powers resulting from the firmans, and under the conditions provided for in the present Treaty, take the necessary measures for insuring the execution of the said Treaty.

In case the Egyptian Government should not have sufficient means at its disposal, it shall call upon the Imperial Ottoman Government which shall take the necessary measures to respond to such appeal; shall give notice thereof to the Signatory Powers of the Declaration of London of the 17th March, 1885; and shall, if necessary, concert with them on the subject.

The provisions of Articles IV, V, VII, and VIII shall not interfere with the measures which shall be taken in virtue of the present Article.

## ARTICLE X.

Similarly, the provisions of Articles IV, V, VII, and VIII shall not interfere with the measures which His Majesty the Sultan and His Highness the

Son Altesse le Khédive au nom de Sa Majesté Impériale et dans les limites des Firmans concédés seraient dans la nécessité de prendre pour assurer, par leurs propres forces, la défense de l'Égypte, et le maintien de l'ordre public.

Dans le cas où Sa Majesté Impériale le Sultan ou Son Altesse le Khédive se trouverait dans le nécessité de se prévaloir des exceptions prévues par le présent Article les Puissances Signataires de la Déclaration de Londres en seraient avisées par le Gouvernement Impérial Ottoman.

Il est également entendu que les prescriptions des quatre Articles dont il s'agit ne porteront en aucun cas obstacle aux mesures que le Gouvernement Impérial Ottoman croira nécessaire de prendre pour assurer par ses propres forces la défense de ses outres possessions situées sur la côte orientale de la Mer Rouge.

### ARTICLE XI.

Les mesures qui seront prises dans les cas prévus par les Articles IX et X du présent Traité ne devront pas faire obstacle au libre usage du Canal. Dans ces mêmes cas, l'érection de fortifications permanentes élevées contrairement aux dispositions de l'Article VIII demeure interdite.

### ARTICLE XII.

Les Hautes Parties Contractantes conviennent, par application du principe d'égalité en ce qui concerne le libre usage du Canal, principe qui forme l'une des bases du présent Traité, qu'aucune d'elles ne recherchera d'avantages territoriaux ou commerciaux, ni de privilèges dans les arrangements internationaux qui pourront intervenir par rapport au Canal. Sont d'ailleurs réservés les droits de la Turquie comme Puissance territoriale.

### ARTICLE XIII.

En dehors des obligations prévues expressément par les clauses du présent Traité, il n'est porté aucune atteinte aux droits souverains de Sa Majesté Impériale le Sultan et aux droits et immunités de Son Altesse le Khédive, tels qu'ils résultent des Firmans.

### ARTICLE XIV.

Les Hautes Parties Contractantes conviennent que les engagements résultant du présent Traité ne seront pas limités par la durée des Actes de Concession de la Compagnie Universelle du Canal du Suez.

### ARTICLE XV.

Les stipulations du présent Traité ne feront pas obstacle aux mesures sanitaires en vigueur en Égypte.

Khedive, in the name of His Imperial Majesty, and within the limits of the Firmans granted, might find it necessary to take for securing by their own forces the defence of Egypt and the maintenance of public order.

In case His Imperial Majesty the Sultan, or His Highness the Khedive, should find it necessary to avail themselves of the exceptions for which this Article provides, the Signatory Powers of the Declaration of London shall be notified thereof by the Imperial Ottoman Government.

It is likewise understood that the provisions of the four Articles aforesaid shall in no case occasion any obstacle to the measures which the Imperial Ottoman Government may think it necessary to take in order to insure by its own forces the defence of its other possessions situated on the eastern coast of the Red Sea.

### ARTICLE XI.

The measures which shall be taken in the cases provided for by Articles IX and X of the present Treaty shall not interfere with the free use of the Canal. In the same cases the erection of permanent fortifications contrary to the provisions of Article VIII is prohibited.

### ARTICLE XII.

The High Contracting Parties, by application of the principle of equality as regards the free use of the Canal, a principle which forms one of the bases of the present Treaty, agree that none of them shall endeavour to obtain with respect to the Canal territorial or commercial advantages or privileges in any international arrangements which may be concluded. Moreover, the rights of Turkey as the territorial Power are reserved.

### ARTICLE XIII.

With the exception of the obligations expressly provided by the clauses of the present Treaty, the sovereign rights of His Imperial Majesty the Sultan and the rights and immunities of His Highness the Khedive, resulting from the Firmans, are in no way affected.

### ARTICLE XIV.

The High Contracting Parties agree that the engagements resulting from the present Treaty shall not be limited by the duration of the Acts of Concession of the Universal Suez Canal Company.

### ARTICLE XV.

The stipulations of the present Treaty shall not interfere with the sanitary measures in force in Egypt.

ARTICLE XVI.

Les Hautes Parties Contractantes s'engagent à porter le présent Traité à la connaissance des États qui ne l'ont pas signé, en les invitant à y accéder.

ARTICLE XVII.

Le présent Traité sera ratifié et les ratifications en seront échangées à Constantinople dans un délai d'un mois ou plus tôt si faire se peut.

En foi de quoi les Plénipotentiaires reepectifs l'on signé et y ont apposé le sceau de leurs armes.

Fait à Constantinople, le 29e jour du mois d'Octobre, de l'an 1888.

[SIGNATURES.]

ARTICLE XVI.

The High Contracting Parties undertake to bring the present Treaty to the knowledge of the States which have not signed it, inviting them to accede to it.

ARTICLE XVII.

The present Treaty shall be ratified, and the ratifications shall be exchanged at Constantinople within the space of one month, or sooner if possible.

In faith of which the respective Plenipotentiaries have signed the present Treaty, and have affixed to it the seal of their arms.

Done at Constantinople, the 29th day of the month of October, in the year 1888.

[SIGNATURES.]

# 13. CENTRAL AMERICAN SHIP CANAL

## TREATY BETWEEN GREAT BRITAIN AND THE UNITED STATES TO FACILITATE THE CONSTRUCTION OF A SHIP CANAL TO CONNECT THE ATLANTIC AND PACIFIC OCEANS.

*Signed at Washington, November* 18, 1901

His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, and the United States of America, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed as their Plenipotentiaries:

His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, the Right Honourable Lord Pauncefote, G.C.B., G.C.M.G., His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States; and

The President of the United States, John Hay, Secretary of State of the United States of America;

Who, having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following Articles:—

### ARTICLE I.

The high Contracting Parties agree that the present Treaty shall supersede the aforementioned Convention of the 19th April, 1850.

### ARTICLE II.

It is agreed that the canal may be constructed under the auspices of the government of the United States, either directly at its own cost, or by gift or loan of money to individuals or Corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Treaty,

the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

## ARTICLE III.

The United States adopts, as the basis of the neutralization of such ship canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say :—

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the Regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible despatch.

5. The provisions of this Article shall apply to waters adjacent to the canal, within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purposes of this Treaty, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents, and from acts calculated to impair their usefulness as part of the canal.

ARTICLE IV.

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralisation or the obligation of the High Contracting Parties under the present Treaty.

ARTICLE V.

The present Treaty shall be ratified by His Britannic Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within six months from the date hereof.

In faith whereof the respective Plenipotentiaries have signed this Treaty and thereunto affixed their seals.

Done in duplicate at Washington, November 18, 1901.

PAUNCEFOTE.
JOHN HAY.

Ratified by the Senate, December 16, 1901, by 72 votes to 6.

# 14. INTERNATIONAL CONVENTION RELATIVE TO BOUNTIES ON SUGAR.

*Signed at Brussels, March* 5, 1902.

[*Ratifications deposited at Brussels, June* 18, 1902.—*February* 1, 1903.]

Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des possessions Britanniques au delà des Mers, Empereur des Indes ; Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, au nom de l'Empire Allemand ; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie ; Sa Majesté le Roi des Belges ; Sa Majesté le Roi d'Espagne et, en son nom, Sa Majesté la Réine-Regente du Royaume ; le Président de la République Française ; Sa Majesté le Roi d'Italie ; Sa Majesté la Reine des Pays-Bas ; Sa Majesté le Roi de Suède et de Norvège ;

Désirant, d'une part, égaliser les conditions de la concurrence entre les sucres de betterave et les sucres de canne des différentes provenances et, d'autre part, aider au développement de la consommation du sucre ;

Considérant que ce double résultat ne peut être atteint que par la suppression des primes et par la limitation de la surtaxe ;

Ont résolu de conclure une Convention à cet effet, et ont nommé pour leurs Plénipotentiaires, savoir : etc., etc.

Lesquels, après s'être communique leurs pleins pouvoirs réspectifs, trouvés en bonne et due forme, sont convenus des Articles suivants :—

ARTICLE I.

Les Hautes Parties Contractantes s'engagent à supprimer, à dater de la mise en vigueur de la présente Convention, les primes directes et indirectes dont bénéficieraient la production ou l'exportation des sucrés, et à ne pas établir de primes de l'espèce pendant toute la durée de la dite Convention. Pour l'application de cette disposition, sont assimilés au sucre les produits sucres tels que confitures, chocolats, biscuts, lait condensé, et tous autres produits analogues contenant en proportion notable du sucre incorporé artificiellement.

Tombent sous l'application de l'alinéa précédent, tous les

(*Official translation.*)

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India ; His Majesty the German Emperor, King of Prussia, in the name of the German Empire ; His Majesty the Emperor of Austria, King of Bohemia, &c., &c., and Apostolic King of Hungary ; His Majesty the King of the Belgians ; His Majesty the King of Spain, and, in his name, Her Majesty the Queen-Regent of the Kingdom ; the President of the French Republic ; His Majesty the King of Italy ; Her Majesty the Queen of the Netherlands ; His Majesty the King of Sweden and Norway ;

Desiring, on the one hand, to equalize the conditions of the competition between beet and cane sugar from various countries, and, on the other hand, to promote the consumption of sugar ;

And considering that this twofold result cannot be attained otherwise than by the abolition of bounties and by the limitation of the surtax ;

Have resolved to conclude a Convention to this effect, and have appointed as their Plenipotentiaries, that is to say : &c. &c.

Who, having exchanged their full powers, found to be in good and due form, have agreed on the following Articles :—

ARTICLE I.

The High Contracting Parties engage to suppress, from the date of the coming into force of the present Convention, the direct and indirect bounties by which the production or exportation of sugar may profit, and not to establish bounties of such a kind during the whole continuance of the said Convention. For the application of this provision, sugar-sweetened products, such as preserves, chocolates, biscuits, condensed milk, and all other analogous products containing, in a notable proportion, artificially incorporated sugar, are assimilated to sugar.

The preceding paragraph applies to all advantages derived directly or

avantages résultant directement ou indirectement, pour les diverses catégories de producteurs, de la législation fiscale des États, notamment :

(*a*) Les bonifications directes accordées en cas d'exportation ;

(*b*) Les bonifications directes accordées à la production ;

(*c*) Les exemptions d'impôt, totales ou partielles, dont bénéficie une partie des produits de la fabrication ;

(*d*) Les bénéfices résultant d'excédents de rendement ;

(*e*) Les bénéfices résultant de l'exagération du drawback ;

(*f*) Les avantages résultant de toute surtaxe d'un taux supérieur à celui fixé par l'Article III.

ARTICLE II.

Les Hautes Parties Contractantes s'engagent à soumettre au régime d'entrepôt, sous la surveillance permanente de jour et de nuit des employés du fisc, les fabriques et les raffineries de sucre, ainsi que les usines dans lesquelles le sucre est extrait des melasses.

A cette fin, les usines seront aménagées de manière à donner toute garantie contre l'enlèvement clandestin des sucres, et les employés auront la faculté de pénétrer dans toutes les parties de usines.

Des livres de contrôle seront tenus concernant une ou plusieurs phases de la fabrication, et les sucres achevés seront déposés dans des magasins spéciaux offrant toutes les garanties desirables de sécurité.

ARTICLE III.

Les Hautes Parties Contractantes s'engagent à limiter au chiffre maximum de 6 fr. par 100 kilog. pour le sucre raffiné, et les sucres assimilables au raffiné, et de 5 fr. 50 pour les autres sucres la surtaxe, c'est-à-dire l'écart entre le taux des droits ou taxes dont sont passibles les sucres étrangers et celui des droits ou taxes auxquels sont soumis les sucres nationaux.

Cette disposition ne vise pas le taux des droits d'entrée dans les pays qui ne produisent pas de sucre ; elle n'est pas non plus applicable aux sous-produits de la fabrication et du raffinage du sucre.

ARTICLE IV.

Les Hautes Parties Contractantes s'engagent à frapper d'un droit spécial, à l'importation sur leur territoire, les sucres originaires de pays qui accorderaient des primes à la production ou à l'exportation.

Ce droit ne pourra être inférieur au montent des primes, directes ou indirectes, accordées dans le pays d'origine. Les Hautes Parties se réservent la faculté, chacune en ce qui la concerne, de prohiber l'importation des sucres primés.

indirectly, by the several categories of producers, from State fiscal legislation, and in particular to—

(*a*) Direct bonuses granted on exportation ;

(*b*) Direct bonuses granted to production ;

(*c*) Total or partial exemptions from taxation which profit a part of the products of manufacture ;

(*d*) Profits derived from excess of yield ;

(*e*) Profits derived from too high a drawback ;

(*f*) Advantages derived from any surtax in excess of the rate fixed by Article III.

ARTICLE II.

The High Contracting Parties engage to place in bond, under the continuous supervision, both by day and by night, of Revenue officers, sugar factories and sugar refineries, as well as factories for the extraction of sugar from molasses.

For this purpose, the factories shall be so arranged as to afford every guarantee against the surreptitious removal of sugar, and the officers shall have the right of entry into all parts of the factories.

Check registers shall be kept respecting one or more of the processes of manufacture, and finished sugar shall be placed in special warehouses affording every requisite guarantee of security.

ARTICLE III.

The High Contracting Parties engage to limit the surtax—that is to say, the difference between the rate of duty or taxation to which foreign sugar is liable and the rate of duty or taxation to which home-produced sugar is subject—to a maximum of 6 fr. per 100 kilog. on refined sugar and on sugar which may be classed as refined, and to 5 fr. 50 c. on other sugar.

This provision is not intended to apply to the rate of import duty in countries which produce no sugar ; neither is it applicable to the by-products of sugar manufacture and of sugar refining.

ARTICLE IV.

The High Contracting Parties engage to impose a special duty on the importation into their territories of sugar from those countries which may grant bounties either on production or on exportation.

This duty shall not be less than the amount of the bounties, direct or indirect, granted in the country of origin. The High Contracting Parties reserve to themselves, each so far as concerns itself, the right to prohibit the importation of bounty-fed sugar.

Pour l'évaluation du montant des avantages résultant éventuellement de la surtaxe spécifiée au *littera* (*f*) de l'Article I^er^, le chiffre fixé par l'Article III est déduit du montant de cette surtaxe: la moitié de la différence est réputée représenter la prime, la Commission Permanente instituée par l'Article VII ayant le droit, à la demande d'un État Contractant, de reviser le chiffre ainsi établi.

## ARTICLE V.

Les Hautes Parties Contractantes s'engagent réciproquement à admettre au taux le plus réduit de leur tarif d'importation, les sucres originaires soit des États Contractants, soit de celles des Colonies ou possession des dits États qui n'accordent pas de primes et auxquelles s'appliquent les obligations de l'Article VIII.

Les sucres de canne et les sucres de betterave ne pourront être frappés de droits différents.

## ARTICLE VI.

L'Espagne, l'Italie, et la Suède seront dispensées des engagements faisant l'objet des Articles I, II, et III, aussi longtemps qu'elles n'exporteront pas de sucre.

Ces États s'engagent à adapter leur législation sur le régime des sucres aux dispositions de la Convention, dans le délai d'une année—ou plus tôt si faire se peut—à partir du moment où la Commission Permanente aura constaté que la condition indiquée ci-dessuss a cessé d'exister.

## ARTICLE VII.

Les Hautes Parties Contractantes conviennent de créer une Commission Permanente, chargée de surveiller exécution des dispositions de la présente Convention.

Cette Commission sera composée de Délégués des divers États Contractants et il lui sera adjoint un Bureau Permanent. La Commission choisit son Président; elle siégera à Bruxelles et se réunira sur la convocation du Président.

Les Délégués auront pour mission :—

(*a*) De constater si, dans les États Contractants, il n'est accordé aucune prime directe ou indirecte à la production ou à l'exportation des sucres;

(*b*) De constater si les États visés à l'Article VI continuent à se conformer à la condition spéciale prévue au dit Article;

(*c*) De constater l'existence des primes dans les États non-Signataires et d'en évaluer le montant en vue de l'application de l'Article IV;

(*d*) D'émettre un avis sur les questions litigieuses;

In order to calculate the amount of the advantages eventually derived from the surtax specified under letter (*f*) of Article I, the figure fixed by Article III is deducted from the amount of this surtax; half of this difference is considered to represent the bounty, the Permanent Commission instituted by Article VII having the right, at the request of a Contracting State, to revise the figure thus obtained.

## ARTICLE V.

The High Contracting Parties engage reciprocally to admit at the lowest rates of their tariffs of import duties sugar the produce either of the Contracting States or of those Colonies or possessions of the said States which do not grant bounties, and to which the obligations of Article VIII are applicable.

Cane sugar and beet sugar may not be subjected to different duties.

## ARTICLE VI.

Spain, Italy, and Sweden shall be exempted from the engagements which form the subject of Articles I, II, and III, so long as they do not export sugar.

Those States engage to adapt their sugar legislation to the provisions of the Convention within one year—or earlier if possible—from the time at which the Permanent Commission shall have found that the above-mentioned condition has ceased to exist.

## ARTICLE VII.

The High Contracting Parties agree to establish a Permanent Commission charged with supervising the execution of the provisions of the present Convention.

This Commission shall be composed of Delegates of the several Contracting States, and a Permanent Bureau shall be attached to it. The Commission elects its President; it will sit at Brussels and will assemble at the summons of the President.

The duties of the Delegates will be :—

(*a*) To pronounce whether in the Contracting States no direct or indirect bounty is granted on the production or on the exportation of sugar.

(*b*) To pronounce whether the States referred to in Article VI continue to fulfil the special condition foreseen by that Article.

(*c*) To pronounce whether bounties exist in the non-signatory States, and to estimate the amount thereof for the purposes of Article IV.

(*d*) To deliver an opinion on contested questions.

(*e*) D'instruire les demandes d'admission à l'Union des États qui n'ont point pris part à la présente Convention.

Le Bureau Permanent sera chargé de reassembler, de traduire, de coordonner et de publier les renseignements de toute nature qui se rapportent à la législation et à la statistique des sucres, non seulement dans les États Contractants, mais également dans les autres États.

Pour assurer l'exécution des dispositions qui précèdent, les Hautes Parties Contractantes communiqueront par la voie diplomatique au Gouvernement Belge, qui les fera parvenir à la Commission, les Lois, Arrêtés, et Règlements sur l'imposition des sucres qui sont ou seront en vigueur dans leurs pays respectifs, ainsi que les renseignements statistiques relatifs à l'objet de la présente Convention.

Chacune des Hautes Parties Contractantes pourra être représentée à la Commission par un Délégué ou par un Délégué et des Délégués-Adjoints.

L'Autriche et la Hongrie seront considérées séparément comme Parties Contractantes.

La première réunion de la Commission aura lieu à Bruxelles, à la diligence du Gouvernement Belge, trois mois au moins avant la mise en vigueur de la présente Convention.

La Commission n'aura qu'une mission de constatation et d'examen. Elle fera, sur toutes les questions qui lui seront soumises, un Rapport qu'elle adressera au Gouvernement Belge, lequel le communiquera aux États intéressés, et provoquera, si la demande en est faite par une des Hautes Parties Contractantes, la réunion d'une Conférence qui arrêtera les résolutions ou les mesures nécessitées par les circonstances.

Toutefois les constatations ét evaluations visées aux *litteras* (*b*) et (*c*) auront un caractère exécutoire pour les États Contractants ; elles seront arrêtées par un vote de majorité, chaque État Contractant disposant d'une voix, et elles sortiront leurs effets au plus tard à l'expiration du délai de deux mois. Au cas où l'un des États Contractants croirait devoir faire appel d'une décision de la Commission, il devra, dans la huitaine de la notification qui lui sera faite de la dite décision, provoquer une nouvelle délibération de la Commission ; celle-ci se réunira d'urgence et statuera définitivement dans le délai d'un mois à dater de l'appel. La nouvelle décision sera exécutoire, au plus tard, dans les deux mois de sa date. La même procédure sera suivie en ce qui concerne l'instruction des demandes d'admission prevue au *littera* (*e*).

Les frais résultant de l'organisation et du fonctionnement du Bureau Permanent et de la Commission—sauf le traitement ou les indemnités de Délégués, qui seront payés par leurs pays respectifs—seront supportés par tous les États Contractants et répartis entre eux d'après un mode à régler par la Commission.

(*e*) To prepare for consideration requests for admission to the Union made by States which have not taken part in the present Convention.

It will be the duty of the Permanent Bureau to collect, translate, arrange and publish information of all kinds respecting legislation on, and statistics of, sugar, not only in the Contracting States, but in other States as well.

In order to insure the execution of the preceding provisions, the High Contracting Parties shall communicate, through the diplomatic channel, to the Belgian Government, which shall forward them to the Commission, the Laws, Orders, and Regulations on the taxation of sugar which are or may in the future be in force in their respective countries, as well as statistical information relative to the object of the present Convention.

Each of the High Contracting Parties may be represented on the Commission by a Delegate, or by a Delegate and Assistant Delegates.

Austria and Hungary shall be considered as separate Contracting Parties.

The first meeting of the Commission shall be held in Brussels, under arrangements to be made by the Belgian Government, at least three months before the coming into force of the present Convention.

The duty of the Commission shall be limited to findings and investigations. It shall draw up a report on all questions submitted to it, and forward the same to the Belgian Government, which shall communicate it to the States interested, and, at the request of one of the High Contracting Parties, shall convoke a Conference, which shall take such decisions or measures as circumstances demand.

The findings and calculations referred to under letters (*b*) and (*c*) must, however, be acted on by the Contracting States ; they will be passed by a vote of the majority—each Contracting State having one vote—and they will take effect in two months' time at the latest. Should one of the Contracting States consider it necessary to appeal against a decision of the Commission, the said State must, within eight days of notification to it of the said decision, require a fresh discussion by the Commission ; the Commission will immediately hold a meeting, and will pronounce its final decision within one month of the date of the appeal. The new decision shall take effect, at latest, within two months of its delivery. The same procedure will be followed with regard to the preparation for consideration of demands for admission provided for under letter (*e*).

The expenses incurred on account of the organization and working of the Permanent Bureau and of the Commission—excepting the salaries or allowances of the Delegates, who shall be paid by their respective countries—shall be borne by all the Contracting States, and shall be divided among them in a manner to be determined by the Commission.

## ARTICLE VIII.

Les Hautes Parties Contractantes s'engagent, pour elles et pour leurs Colonies ou possessions, exception faite des Colonies autonomes de la Grande-Bretagne et des Indes Orientales Britanniques, à prendre les mesures nécessaires pour empêcher que les sucres primés qui auront traversé en transit le territrire d'un État Contractant ne jouissent des avantages de la Convention sur le marché destinataire. La Commission Permanente fera à cet égard les propositions nécessaires.

## ARTICLE IX.

Les États qui n'ont point pris part à la présente Convention seront admis à y adhérer sur leur demande et après avis conforme de la Commission Permanente.

La demande sera adressée par la voie diplomatique au Gouvernement Belge, qui se chargera, le cas échéant, de notifier l'adhésion à tous les autres Gouvernements. L'adhésion emportera, de plein droit, accession à toutes les charges et admissions à tous les avantages stipulés par la présente Convention, et elle produira ses effets à partir du 1er Septembre qui suivra l'envoi de la notification faite par le Gouvernement Belge aux autres États Contractants.

## ARTICLE X.

La présente Convention sera mise à exécution à partir du 1er Septembre, 1903.

Elle restera en vigueur pendant cinq années à partir de cette date, et dans le cas ou aucune des Hautes Parties Contractantes n'aurait notifié au Gouvernement Belge, douze mois avant l'expiration de la dite période de cinq années, son intention d'en faire cesser les effets, elle continuera à rester en vigueur pendant une année et, ainsi de suite, d'année en année.

Dans le cas ou l'un des États Contractants dénoncerait la Convention, cette dénonciation n'aurait d'effet qu'à son égard; les autres États conserveraient, jusqu'au 31 Octobre de l'anneé de la dénonciation, la faculté de notifier l'intention de se retirer également à partir du 1er September de l'année suivante. Si l'un de ces derniers États entendait user de cette faculté, le Gouvernement Belge provoquerait la réunion à Bruxelles, dans les trois mois, d'une Conférence qui aviserait aux mesures à prendre.

## ARTICLE XI.

Les dispositions de la présente Convention seront appliquées aux provinces d'outre-mer, Colonies et possessions étrangères des Hautes Parties Contractantes. Sont exceptées toutefois les Colonies et possessions Britanniques et Néerlandaises, sauf en

## ARTICLE VIII.

The High Contracting Parties engage, for themselves and for their Colonies or possessions, exception being made in the case of the self-governing Colonies of Great Britain and the British East Indies, to take the necessary measures to prevent bounty-fed sugar which has passed in transit through the territory of a Contracting State from enjoying the benefits of the Convention in the market to which it is being sent. The Permanent Commission shall make the necessary proposals with regard to this matter.

## ARTICLE IX.

States which have not taken part in the present Convention shall be admitted to adhere to it at their request, and after concurrence has been expressed by the Permanent Commission.

The request shall be addressed through the diplomatic channel to the Belgian Government, which shall undertake, when occasion arises, to notify the adhesion to all the other Governments. The adhesion shall entail, as of right, acceptance of all the obligations and admission to all the advantages stipulated by the present Convention, and will take effect as from the 1st September following the dispatch of the notification by the Belgian Government to the other Contracting States.

## ARTICLE X.

The present Convention shall come into force from the 1st September, 1903.

It shall remain in force for five years from that date, and in the case of none of the High Contracting Parties having notified to the Belgian Government, twelve months before the expiration of the said period of five years, its intention of terminating the effects thereof, it shall continue to remain in force for one year, and so on from year to year.

In the event of one of the Contracting States denouncing the Convention, such denunciation shall have effect only in respect to such State; the other States shall retain, until the 31st October of the year in which the denunciation takes place, the right of notifying their intention of withdrawing as from the 1st September of the following year. If one of these latter States desires to exercise this right, the Belgian Government shall summon a Conference at Brussels within three months to consider the measures to be taken.

## ARTICLE XI.

The provisions of the present Convention shall apply to the oversea Provinces, Colonies, and foreign possessions of the High Contracting Parties.

ce qui concerne les dispositions faisant l'objet des Articles V et VIII.

La situation des Colonies et possessions Britanniques et Néerlandaises est, pour le surplus, déterminée par les déclarations insérées au Protocole de Clôture.

ARTICLE XII.

L'exécution des engagements réciproques contenus dans la présente Convention est subordonnée, en tant que de besoin, à l'accomplissement des formalités et régles établies par les Lois Constitutionnelles de chacun des États Contractants.

La présente Convention sera ratifiée, et les ratifications en seront déposées à Bruxelles, au Ministère des Affaires Étrangères, le 1er Février, 1903, ou plus tôt si faire se peut.

Il est entendu que la présente Convention ne deviendra obligatoire de plein droit que si elle est ratifiée au moins par ceux des États Contractants qui ne sont pas visés par la disposition exceptionnelle de l'Article VI. Dans le cas où un ou plusieurs des dits États n'auraient pas déposé leurs ratifications dans le délai prévu, le Gouvernement Belge provoquera immédiatement une décision des autres États Signataires quant à la mise en vigueur, entre eux seulement, de la présente Convention.

En foi de quoi les Plénipotentiaires respectifs out signé la présente Convention.

Fait à Bruxelles, en un seul exemplaire, le 5 Mars, 1902.

[Signatures.]

*Protocole de Clôture.*

Au moment de procéder à la signature de la Convention relative au régime des sucres conclue, à la date de ce jour, entre les Gouvernements de l'Allemagne, de l'Autriche et de la Hongrie, de la Belgique, de l'Espagne, de la France, de la Grande-Bretagne, de l'Italie, des Pays-Bas, et de la Suède, les Plénipotentiaires soussignés sont convenus de ce qui suit:—

*A l'Article III.*

Considérant que le but de la surtaxe est de protéger efficacement le marché intérieur des pays producteurs, les Hautes Parties Contractantes se réservent la faculté, chacune en ce qui la concerne, de proposer un relèvement de la surtaxe dans le cas où des quantités considérables de sucres originaires d'un État Contractant pénétreraient chez elles ; ce relèvement ne frapperait que les sucres originaires de cet État.

La proposition devra être adressée à la Commission Permanente, laquelle statuera à bref délai, par un vote de majorité, sur le bien fondé de la mesure proposée, sur la durée de son



The British and Netherland Colonies and possessions are expected, save as regards the provisions forming the object of Articles V and VIII.

The position of the British and Netherland Colonies and possessions is, furthermore, regulated by the Declaration inserted in the final protocol.

ARTICLE XII.

The fulfilment of the mutual engagements contained in the present Convention is subject, as far as necessary, to the completion of the formalities and requirements established by the Constitutional laws of each of the Coning States.

The present Convention shall be ratified, and the ratifications shall be deposited at the Ministry for Foreign Affairs at Brussels, on the 1st February, 1903, or earlier if possible.

It is understood that the present Convention shall become binding, as of right, only if it is ratified by those at least of the Contracting States who are not the subject of the exceptional provision of Article VI. Should one or more of the said States not have deposited their ratifications within the period stipulated, the Belgian Government shall immediately take steps to obtain a decision by the other Signatory Powers as to whether the present Convention shall come into force among them alone.

In faith whereof the respective Plenipotentiaries have signed the present Convention.

Done at Brussels, in single copy, March 5, 1902.

[Signatures.]

*Final Protocol.*

On proceeding to the signature of the Sugar Convention concluded this day between the Governments of Germany, of Austria, and of Hungary, of Belgium, of Spain, of France, of Great Britain, of Italy, of the Netherlands, and of Sweden, the undersigned Plenipotentiaries have agreed as follows:—

*As regards Article III.*

Considering that the object of the surtax is the effectual protection of the home markets of the producing countries, the High Contracting Parties reserve to themselves the right, each as concerns itself, to propose an increase of the surtax, should considerable quantities of sugar produced by one of the Contracting States enter their territories; this increase would only apply to sugar produced by that State.

The proposal must be addressed to the Permanent Commission, which will decide, at an early date, by a vote of the majority, whether there is good

application et sur le taux du relèvement ; celui-ci ne dépassera pas 1 fr. par 100 kilog.

L'adhésion de la Commission ne pourra être donnée que dans le cas où l'envahissement du marché considéré serait la conséquence d'une réelle infériorité économique, et non le résultat d'une élévation factice des prix provoquée par une entente entre producteurs.

*A l'Article XI.*

(A)—1. Le Gouvernement de la Grand-Bretagne déclare qu'aucune prime directe ou indirecte ne sera accordée aux sucres des Colonies de la Couronne pendant la durée de la Convention.

2. Il déclare aussi, par mesure exceptionnelle et tout en réservant, en principe, son entière liberté d'action en ce qui concerne les relations fiscales entre le Royaume-Uni et ses Colonies et possessions, que, pendant la durée de la Convention, aucune préférence ne sera accordée dans le Royaume-Uni aux sucres coloniaux vis-à-vis de sucres originaires des États Contractants.

3. Il déclare enfin que la Convention sera soumise par ses soins aux Colonies autonomes et aux Indes Orientales pour qu'elles aient la faculté d'y donner leur adhésion.

Il est entendu que le Gouvernement de Sa Majesté Britannique a la faculté d'adhérer à la Convention au nom des Colonies de la Courronne.

(B) Le Gouvernement des Pays-Bas déclare que, pendant la durée de la Convention, aucune prime directe ou indirecte ne sera accordée aux sucres des Colonies Néerlandaises et que ces sucres ne seront pas admis dans les Pays-Bas à un tarif moindre que celui appliqué aux sucres originaires des États Contractants.

Le présent Protocole de Clôture, qui sera ratifié en même temps que la Convention conclue à la date de ce jour, sera considéré comme faisant partie intégrante de cette Convention et aura même force, valeur, et durée.

En foi de quoi les Plénipotentiaires soussignés ont dressé le présent Protocole.

Fait à Bruxelles, le 5 Mars, 1902.

[Signatures.]

## PROCÈS-VERBAL OF DEPOSIT OF RATIFICATIONS.

Les Parties Contractantes ayant unanimement accepté que l'échange des ratifications sur la Convention relative au régime des sucres, signée à Bruxelles le 5 Mars, 1902, se ferait moyennant le dépôt des instruments respectifs aux archives du Ministére des Affaires Étrangères de Belgique, le présent procès-verbal de

ground for the proposed measure, as to the period for which it shall be enforced, and as to the rate of the increase ; the latter shall not exceed 1 fr. per 100 kilog.

The assent of the Commission shall only be given when the invasion of the market concerned is the consequence of real economic inferiority, and not the result of a factitious increase in price brought about by an agreement among producers.

*As regards Article XI.*

(A) 1. The Government of Great Britain declares that no bounty, direct or indirect, shall be granted to the sugar of the Crown Colonies during the continuance of the Convention.

2. It also declares, as an exceptional measure, and reserving in principle entire liberty of action as regards the fiscal relations between the United Kingdom and its Colonies and possessions, that, during the continuance of the Convention, no preference will be granted in the United Kingdom to Colonial sugar as against sugar from the Contracting States.

3. Lastly, it declares that the Convention will be submitted by it to the self-governing Colonies and to the East Indies, so that they may have an opportunity of giving their adhesion to it.

It is understood that the Government of His Britannic Majesty has power to adhere to the Convention on behalf of the Crown Colonies.

(B) The Government of the Netherlands declares that during the continuance of the Convention no bounty, direct or indirect, shall be granted to sugar from the Netherland Colonies, and that such sugar shall not be admitted into the Netherlands at a lower Tariff than that applied to sugar from the Contracting States.

The present Final Protocol, which shall be ratified at the same time as the Convention concluded this day, shall be regarded as forming an integral part of the Convention, and shall have the same force, value, and duration.

In Faith whereof the undersigned Plenipotentiaries have drawn up the present Protocol.

Done at Brussels, the 5th March, 1902.

[Signatures.]

## MINUTE OF DEPOSIT OF RATIFICATIONS.

The Contracting Parties having unanimously agreed that the exchange of ratifications respecting the Sugar Convention signed at Brussels on the 5th March, 1902, should be effected by means of the deposit of the respective instruments in the archives of the Ministry of Foreign Affairs of Belgium, the

dépôt a été, à cet effet, ouvert au Ministère des Affaires Étrangères ce jourd'hui, le 18 Juin, 1902.

(Signé) P. DE FAVEREAU.

Ce même jour a été effectué le dépôt des ratifications de Sa Majesté le Roi des Belges.

Ont été successivement présentées au dépôt :

(Signé) BÜLOW.

Le 15 Janvier, 1903, les ratifications de Sa Majesté l'Empereur d'Allemagne, Roi de Prusse.

(Signé) A. GÉRARD.

Le 29 Janvier, 1903, les ratifications du Président de la Republique Française.

(Signé) R. DE PESTEL.

Le 30 Janvier, 1903, less ratifications de Sa Majesté La Reine des Pays-Bas.

(Signé) CONSTANTINE PHIPPS.

Le 31 Janvier, 1903, les ratifications de Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Possessions Britanniques au delà des Mers, Empereur des Indes, dans les conditions indiquées à la note ci-annexée.

(Signé) T. B. KOZIEBRODZKI.

Le 31 Janvier, 1903, les ratifications de Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., &c., et Roi Apostolique de Hongrie.

(Signé) R. CANTAGALLI.

Le 1er Février, 1903, les ratifications de Sa Majesté le Roi d'Italie.

Conformément à l'Article XII de la Convention du 5 Mars, 1902, le présent procès-verbal a été clos à la date de ce jour.

Le Ministre des Affaires Étrangères
de Belgique,
(Signé) P. DE FAVEREAU.

*Bruxelles le* 1er *Fevrier*, 1903.

Au moment de déposer les ratifications de Sa Majesté Britannique, son Excellence le Ministre de la Grande-Bretagne déclare

present record of deposit has, with this object, been opened in the Ministry for Foreign Affairs to-day, the 18th June, 1902.

(Signed) P. DE FAVEREAU.

This day has been effected the deposit of ratifications of His Majesty the King of the Belgians.

The following have been successively deposited :

(Signed) BÜLOW.

The 15th January, 1903, the ratifications of His Majesty the German Emperor, King of Prussia.

(Signed) A. GÉRARD.

The 29th January, 1903, the ratifications of the President of the French Republic.

(Signed) R. DE PESTEL.

The 30th January, 1903, the ratifications of Her Majesty the Queen of the Netherlands.

(Signed) CONSTANTINE PHIPPS.

The 31st January, 1903, the ratifications of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, according to the conditions laid down in the note annexed.

(Signed) T. B. KOZIEBRODZKI.

The 31st January, 1903, the ratifications of His Majesty the Emperor of Austria, King of Bohemia, &c., &c., and Apostolic King of Hungary.

(Signed) R. CANTAGALLI.

The 1st February, 1903, the ratifications of His Majesty the King of Italy.

In accordance with Article XII of the Convention of the 5th March, 1902, the present record has been closed on to-day's date.

The Minister for Foreign Affairs
for Belgium,
(Signed) P. DE FAVEREAU.

*Brussels, February* 1, 1903.

In depositing the ratifications of His Britannic Majesty, his Excellency the Minister of Great Britain declares that it is necessary to place on record

qu'il est indispensable de constater que le Gouvernement de Sa Majesté Britannique ne consentira dans aucun cas à être obligé de pénaliser les sucres primés qui pourraient être importés dans le Royaume-Uni et qui proviendraient de l'une ou de l'autre des Colonies Britanniques autonomes.

Il déclare, en outre, qu'il ne pourrait consentir à ce qu'aucune question se rattachant à cet objet soit soumise à la Commission Permanente à établir en vertu de l'Article VII, et que la ratification de la Convention par Sa Majesté est déposée moyennant la Déclaration explicite mentionnée ci-dessus.

Pour copie conforme :
Le Secrétaire-Général du
Ministère des Affaires Étrangères de Belgique,

(Signé) F. A. LAMBERMONT.

*Bruxelles, le* 31 *Janvier*, 1903.

that the Government of His Britannic Majesty will not consent under any circumstances to be bound to penalize bounty-fed sugar imported into the United Kingdom from any of the self-governing British Colonies.

He further declares that His Britannic Majesty's Government are not prepared to accept any reference of this question to the Permanent Commission to be established under Article VII, and that His Majesty's ratification of the Convention is deposited under the explicit declaration above mentioned.

The Secretary-General of the
Ministry of Foreign Affairs of Belgium,

(Signed) F. A. LAMBERMONT.

*Brussels, January* 31, 1903.

# 15. AFRICAN SLAVE TRADE.

## GENERAL ACT OF THE BRUSSELS CONFERENCE, 1889-90; WITH ANNEXED DECLARATION.

(ABRIDGED.)

Au nom de Dieu Tout-Puissant.

SA Majesté l'Empereur d'Allemagne, Roi de Prusse, au nom de l'Empire Allemand ;

Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie ;

Sa Majesté le Roi des Belges ;

Sa Majesté le Roi de Danemark ;

Sa Majesté le Roi d'Espagne et en son nom Sa Majesté la Reine Régente du Royaume ;

Sa Majesté le Roi-Souverain de l'État Indépendant du Congo ;

Le Président des États-Unis d'Amérique ;

Le Président de la République Française ;

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes ;

Sa Majesté le Roi d'Italie ;

Sa Majesté le Roi des Pays-Bas, Grand-Duc de Luxembourg, &c. ;

Sa Majesté le Schah de Perse ;

Sa Majesté le Roi de Portugal et des Algarves, &c. ;

Sa Majesté l'Empereur de Toutes les Russies ;

Sa Majesté le Roi de Suède et de Norvège, &c. ;

Sa Majesté l'Empereur des Ottomans et Sa Hautesse le Sultan de Zanzibar ;

Également animés de la ferme volonté de mettre un terme aux crimes et aux dévastations qu'engendre la Traite des Esclaves Africains, de protéger efficacement les populations aborigènes de l'Afrique, et d'assurer à ce vaste Continent les bienfaits de la paix et de la civilisation ;

Voulant donner une sanction nouvelle aux décisions déjà prises dans le même sens et à diverses époques par les Puissances, compléter les résultats qu'elles ont obtenus et arrêter un ensemble de mesures qui garantissent l'accomplissement de l'œuvre qui fait l'objet de leur commune sollicitude ;

(*Official translation.*)

*General Act of the Brussels Conference.*

In the Name of God Almighty.

HIS Majesty the German Emperor, King of Prussia, in the name of the German Empire ;

His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary ;

His Majesty the King of the Belgians ;

His Majesty the King of Denmark ;

His Majesty the King of Spain, and in his name Her Majesty the Queen Regent of the Kingdom ;

His Majesty the Sovereign of the Independent State of the Congo ;

The President of the United States of America ;

The President of the French Republic ;

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India ;

His Majesty the King of Italy ;

His Majesty the King of the Netherlands, Grand Duke of Luxemburg, &c. ;

His Majesty the Shah of Persia ;

His Majesty the King of Portugal and the Algarves, &c. ;

His Majesty the Emperor of All the Russias ;

His Majesty the King of Sweden and Norway, &c. ;

His Majesty the Emperor of the Ottomans and His Highness the Sultan of Zanzibar ;

Equally animated by the firm intention of putting an end to the crimes and devastations engendered by the Traffic in African Slaves, protecting effectively the aboriginal populations of Africa, and insuring for that vast continent the benefits of peace and civilization ;

Wishing to give a fresh sanction to the decisions already taken in the same sense and at different epochs by the Powers, to complete the results obtained by them, and to draw up a collection of measures guaranteeing the accomplishment of the work which is the object of their common solicitude ;

Ont résolu, sur l'invitation qui leur a été adressée par le Gouvernement de Sa Majesté le Roi des Belges, d'accord avec le Gouvernement de Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, de réunir à cet effet une Conférence à Bruxelles, et ont nommé pour leurs Plénipotentiaires, savoir :

[NAMES]

Lesquels, munis de pleins pouvoirs qui ont été trouvés en bonne et due forme, ont adopté les dispositions suivantes :—

CHAPITRE I. — PAYS DE TRAITE. MESURES À PRENDRE AUX LIEUX D'ORIGINE.

ARTICLE I.

Les Puissances déclarent que les moyens les plus efficaces pour combattre la Traite à l'intérieur de l'Afrique sont les suivants :—

1. Organisation progressive des services administratifs, judiciaires, religieux, et militaires dans les territoires d'Afrique placés sous la souveraineté ou le Protectorat des nations civilisées ;

2. Établissement graduel, à l'intérieur, par les Puissances de qui relèvent les territoires, de stations fortement occupées, de manière que leur action protectrice ou répressive puisse se faire sentir avec efficacité dans les territoires dévastés par les chasses à l'homme ;

3. Construction de routes et notamment de voies ferrées reliant les stations avancées à la côte et permettant d'accéder aisément aux eaux intérieures et sur le cours supérieur des fleuves et rivières qui seraient coupés par des rapides et des cataractes, en vue de substituer des moyens économiques et accélérés de transport au portage actuel par l'homme ;

4. Installation de bateaux à vapeur sur les eaux intérieures navigables et sur les lacs, avec l'appui de postes fortifiés établis sur les rives ;

5. Établissement de lignes télégraphiques assurant la communication des postes et des stations avec la côte et les centres d'administration ;

6. Organisation d'expéditions et de colonnes mobiles, qui maintiennent les communications des stations entre elles et avec la côte, en appuient l'action répressive et assurent la sécurité des routes de parcours ;

7. Restriction de l'importation des armes à feu, au moins des armes perfectionnées, et des munitions dans toute l'étendue des territoires atteints par la Traite.

ARTICLE II.

Les stations, les croisières intérieures organisées par chaque Puissance dans ses eaux et les postes qui leur servent de ports

Have resolved, on the invitation addressed to them by the Government of His Majesty the King of the Belgians, in agreement with the Government of Her Majesty the Queen of Great Britain and Ireland, Empress of India, to assemble with this object a Conference at Brussels, and have named as their Plenipotentiaries :

[NAMES]

Who, furnished with full powers which have been found in good and due form, have adopted the following provisions :—

CHAPTER I.—SLAVE TRADE COUNTRIES.—MEASURES TO BE TAKEN IN THE PLACES OF ORIGIN.

ARTICLE I.

The Powers declare that the most effective means for counteracting the Slave Trade in the interior of Africa are the following :—

1. Progressive organization of the administrative, judicial, religious, and military services in the African territories placed under the sovereignty or protectorate of civilized nations.

2. The gradual establishment in the interior by the Powers to which the territories are subject of strongly occupied stations, in such a way as to make their protective or repressive action effectively felt in the territories devastated by slave-hunting.

3. The construction of roads, and in particular of railways, connecting the advanced stations with the coast, and permitting easy access to the inland waters, and to such of the upper courses of the rivers and streams as are broken by rapids and cataracts, in view of substituting economical and rapid means of transport for the present means of carriage by men.

4. Establishment of steam-boats on the inland navigable waters and on the lakes, supported by fortified posts established on the banks.

5. Establishment of telegraphic lines, insuring the communication of the posts and stations with the coast and with the administrative centres.

6. Organization of expeditions and flying columns, to keep up the communication of the stations with each other and with the coast, to support repressive action, and to insure the security of high roads.

7. Restriction of the importation of fire-arms, at least of modern pattern, and of ammunition throughout the entire extent of the territories infected by the Slave Trade.

ARTICLE II.

The stations, the inland cruizers organized by each Power in its waters, and the posts which serve as ports of register for them shall, independently

d'attache, indépendamment de leur mission principale, qui sera d'empêcher la capture d'esclaves et d'intercepter les routes de la Traite, auront pour tâche subsidiaire :—

1. De servir de point d'appui et au besoin de refuge aux populations indigènes placées sous la souveraineté ou le Protectorat de l'État de qui relève la station, aux populations indépendantes, et temporairement à toutes autres en cas de danger imminent ; de mettre les populations de la première de ces catégories à même de concourir à leur propre défense ; de diminuer les guerres intestines entre les tribus par la voie de l'arbitrage ; de les initier aux travaux agricoles et aux arts professionnels, de façon à accroître leur bien-être, à les élever à la civilisation et à amener l'extinction des coutumes barbares, telles que le cannibalisme et les sacrifices humains ;

2. De prêter aide et protection aux entreprises du commerce, d'en surveiller la légalité en contrôlant notamment les contrats de service avec les indigènes et de préparer la fondation de centres de culture permanents et d'établissements commerciaux ;

3. De protéger, sans distinction de culte, les Missions établies ou à établir ;

4. De pourvoir au service sanitaire et d'accorder l'hospitalité et des secours aux explorateurs et à tous ceux qui participent en Afrique à l'œuvre de la répression de la Traite.

## ARTICLE III.

Les Puissances qui exercent une souveraineté ou un Protectorat en Afrique, confirmant et précisant leurs déclarations antérieures, s'engagent à poursuivre, graduellement, suivant que les circonstances le permettront, soit par les moyens indiquées ci-dessus, soit par tous autres qui leur paraîtront convenables, la répression de la Traite, chacune dans ses possessions respectives et sous sa direction propre. Toutes les fois qu'elles le jugeront possible, elles prêteront leurs bons offices aux Puissances qui, dans un but purement humanitaire, accompliraient en Afrique une mission analogue.

## ARTICLE IV.

Les Puissances exerçant des pouvoirs souverains ou des Protectorats en Afrique pourront toutefois déléguer à des Compagnies munies de Chartes, tous ou partie des engagements qu'elles assument en vertu de l'Article III. Elles demeurent néanmoins directement responsables des engagements qu'elles contractent par le présent Acte Général et en garantissent l'exécution.

Les Puissances promettent accueil, aide et protection aux Associations nationales et aux initiatives individuelles qui

of their principal task, which is to prevent the capture of slaves and intercept the routes of the Slave Trade, have the following subsidiary duties :—

1. To support and, if necessary, to serve as a refuge for the native populations, whether placed under the sovereignty or the protectorate of the State to which the station is subject, or independent, and temporarily for all other natives in case of imminent danger ; to place the populations of the first of these categories in a position to co-operate for their own defence ; to diminish inland wars between tribes by means of arbitration ; to initiate them in agricultural works and in the industrial arts so as to increase their welfare ; to raise them to civilization and bring about the extinction of barbarous customs, such as cannibalism and human sacrifices.

2. To give aid and protection to commercial undertakings ; to watch over their legality by controlling especially contracts of service with natives, and to lead up to the foundation of permanent centres of cultivation and of commercial establishments.

3. To protect, without distinction of creed, the Missions which are already or are about to be established.

4. To provide for the sanitary service, and to grant hospitality and help to explorers and to all who take part in Africa in the work of repressing the Slave Trade.

## ARTICLE III.

The Powers exercising a sovereignty or a protectorate in Africa confirm and give precision to their former declarations, and undertake to proceed gradually, as circumstances permit, either by the means above indicated, or by any other means which they may consider suitable, with the repression of the Slave Trade, each State in its respective possessions and under its own direction. Whenever they consider it possible they will lend their good offices to the Powers which, with a purely humanitarian object, may be engaged in Africa upon a similar mission.

## ARTICLE IV.

The States exercising sovereign powers or protectorates in Africa may in all cases delegate to Companies provided with Charters all or a portion of the engagements which they assume in virtue of Article III. They remain, nevertheless, directly responsible for the engagements which they contract by the present Act, and guarantee the execution thereof. The Powers promise to receive, aid, and protect the national Associations and enterprises due to

voudraient coopérer dans leurs possessions à la répression de la Traite, sous la réserve de leur autorisation préalable et révocable en tout temps, de leur direction et contrôle, et à l'exclusion de tout exercice des droits de la souveraineté.

ARTICLE V.

Les Puissances Contractantes s'obligent, à moins qu'il n'y soit pourvu déjà par des lois conformes à l'esprit du présent Article, à édicter ou à proposer à leurs Législatures respectives, dans le délai d'un an au plus tard à partir de la date de la Signature du présenté Acte Général, une Loi rendant applicables, d'une part, es dispositions de leur législation pénale qui concernent les attentats graves envers les personnes, aux organisateurs et coopérateurs des chasses à l'homme, aux auteurs de la mutilation des adultes et enfants mâles et à tous individus participant à la capture des esclaves par violence ; et, d'autre part, des dispositions qui concernent les attentats à la liberté individuelle, aux convoyeurs, transporteurs, et marchands d'esclaves.

Les coauteurs et complices des diverses catégories pécifiées ci-dessus de capteurs et trafiquants d'esclaves seront punis de peines proportionnées à celles encourues par les auteurs.

Les coupables qui se seraient soustraits à la juridiction des autorités du pays où les crimes ou délits auraient été commis seront mis en état d'arrestation soit sur communication des pièces de l'instruction de la part des autorités qui ont constaté les infractions, soit sur toute autre preuve de culpabilité, par les soins de la Puissance sur le territoire de laquelle ils seront découverts, et tenus sans autre formalité à la disposition des Tribunaux compétents pour les juger.

Les Puissances se communiqueront, dans le plus bref délai possible, les Lois ou Décrets existants ou promulgués en exécution du présent Article.

ARTICLE VI.

Les esclaves libérés à la suite de l'arrestation ou de la dispersion d'un convoi à l'intérieur du Continent, seront renvoyés, si les circonstances le permettent, dans leur pays d'origine ; sinon, l'autorité locale leur facilitera, autant que possible, les moyens de vivre et, s'ils le désirent, de se fixer dans la contrée.

ARTICLE VII.

Tout esclave fugitif qui, sur le Continent, réclamera la protection des Puissances Signataires, devra l'obtenir et sera reçu dans les camps et stations officiellement établis par elles, ou à bord des bâtiments de l'État naviguant sur les lacs et rivières. Les stations et les bateaux privées ne sont admis à exercer le droit d'asile que sous la réserve du consentement préalable de l'État.

private initiative which may wish to co-operate in their possessions in the repression of the Slave Trade, subject to their receiving previous authorization, such authorization being revocable at any time, subject also to their being directed and controlled, and to the exclusion of the exercise of rights of sovereignty.

ARTICLE V.

The Contracting Powers undertake, unless this has already been provided for by their laws in accordance with the spirit of the present Article, to enact or propose to their respective Legislatures in the course of one year at latest from the date of the signature of the present General Act a Law for rendering applicable, on the one hand, the provisions of their penal laws concerning the graver offences against the person, to the organizers and abettors of slave-hunting, to perpetrators of the mutilation of adults and male infants, and to all persons who may take part in the capture of slaves by violence ; and, on the other hand, the provisions relating to offences against individual liberty, to carriers, transporters, and dealers in slaves.

The associates and accessories of the different categories of slave captors and dealers above specified shall be punished with penalties proportionate to those incurred by the principals.

Guilty persons who may have escaped from the jurisdiction of the authorities of the country where the crimes or offences have been committed shall be arrested either on communication of the incriminatory evidence by the authorities who have ascertained the violation of the law, or on production of any other proof of guilt by the Power on whose territory they may have been discovered, and shall be kept without other formality at the disposal of the Tribunals competent to try them.

The Powers will communicate to each other within the shortest possible delay the Laws or Decrees existing or promulgated in execution of the present Article.

ARTICLE VI.

Slaves liberated in consequence of the stoppage or dispersal of a convoy in the interior of the continent shall be sent back, if circumstances permit, to their country of origin ; if not, the local authorities shall facilitate as much as possible their means of living, and, if they desire it, help them to settle on the spot.

ARTICLE VII.

Any fugitive slave claiming on the continent the protection of a Signatory Power shall obtain it, and shall be received in the camps and stations officially established by such Power, or on board the vessels of such Power, plying on the lakes and rivers. Private stations and boats are only permitted to exercise the right of asylum subject to the previous sanction of such Power.

## ARTICLE VIII.

L'expérience de toutes les nations qui ont des rapports avec l'Afrique ayant démontré le rôle pernicieux et prépondérant des armes à feu dans les opérations de Traite et dans les guerres intestines entre tribus indigènes, et cette même expérience ayant prouvé manifestement que la conservation des populations Africaines, dont les Puissances ont la volonté expresse de sauvegarder l'existence, est une impossibilité radicale si des mesures restrictives du commerce des armes à feu et des munitions ne sont établies, les Puissances décident, pour autant que le permet l'état actuel de leurs frontières, que l'importation des armes à feu et spécialement des armes rayées et perfectionnées, ainsi que de la poudre, des balles, et des cartouches, est, sauf dans les cas et sous les conditions prévus à l'Article suivant, interdite dans les territoires compris entre 20e parallèle nord et le 22e parallèle sud et aboutissant vers l'ouest à l'Océan Atlantique, vers l'est à l'Océan Indien et ses dépendances, y compris les îles adjacentes au littoral jusqu'à 100 milles marins de la côte.

## ARTICLE IX.

L'introduction des armes à feu et de leurs munitions, lorsqu'il y aura lieu de l'autoriser dans les possessions des Puissances Signataires qui exercent des droits de souveraineté ou de Protectorat en Afrique, sera réglée, à moins qu'un régime identique ou plus rigoureux n'y soit déjà appliqué, de la manière suivante, dans la zone déterminée à l'Article VIII.

Toutes armes à feu importées devront être déposées aux frais, risques, et périls des importateurs, dans un entrepôt public placé sous le contrôle de l'Administration de l'État. Aucune sortie d'armes à feu ni de munitions importées ne pourra avoir lieu des entrepôts sans l'autorisation préalable de l'Administration. Cette autorisation sera, sauf les cas spécifiés ci-après, refusée pour la sortie de toutes armes de précision telles que fusils rayés, à magasin ou se chargeant par la culasse, entière ou en pièces détachées, de leurs cartouches, des capsules ou d'autres munitions destinées à les approvisionner.

Dans les ports de mer et sous les conditions offrant les garanties nécessaires, les Gouvernements respectifs pourront admettre aussi les entrepôts particuliers, mais seulement pour la poudre ordinaire et les fusils à silex, et à l'exclusion des armes perfectionnées et de leurs munitions.

Indépendamment des mesures prises directement par les Gouvernements pour l'armement de la force publique et l'organisation de leur défense, des exceptions pourront être admises, à titre individuel, pour des personnes offrant une garantie suffisante



## ARTICLE VIII.

The experience of all nations who have intercourse with Africa having shown the pernicious and preponderating part played by fire-arms in Slave Trade operations as well as in internal war between the native tribes; and this same experience having clearly proved that the preservation of the African populations whose existence it is the express wish of the Powers to safeguard is a radical impossibility if restrictive measures against the trade in fire-arms and ammunition are not established, the Powers decide, in so far as the present state of their frontiers permits, that the importation of fire-arms, and especially of rifles and improved weapons, as well as of powder, balls, and cartridges, is, except in the cases and under the conditions provided for in the following Article, prohibited in the territories comprised between the 20th parallel of north latitude and the 22nd parallel of south latitude, and extending westward to the Atlantic Ocean and eastward to the Indian Ocean, and its dependencies, comprising the islands adjacent to the coast as far as 100 nautical miles from the shore.

## ARTICLE IX.

The introduction of fire-arms and ammunition, when there shall be occasion to authorize it in the possessions of the Signatory Powers which exercise rights of sovereignty or of protectorate in Africa shall be regulated, unless identical or more rigorous Regulations have been already applied, in the following manner in the zone laid down in Article VIII:—

All imported fire-arms shall be deposited, at the cost, risk, and peril of the importers, in a public warehouse placed under the supervision of the Administration of the State. No withdrawal of fire-arms or imported ammunition shall take place from such depôts without the previous authorization of the Administration. This authorization shall be, except in cases hereinafter specified, refused for the withdrawal of all arms of precision, such as rifles, magazine-guns, or breech-loaders, whether whole or in detached pieces, their cartridges, caps, or other ammunition intended for them.

At the seaports and under conditions affording the needful guarantees the respective Governments may permit private depôts, but only for ordinary powder and flint-lock muskets, and to the exclusion of improved arms and their ammunition.

Independently of the measures directly taken by Governments for the arming of the public force and the organization of their defence, individual

que l'arme et les munitions qui leur seraient délivrées ne seront pas données, cédées, ou vendues à des tiers, et pour les voyageurs munis d'une déclaration de leur Gouvernement constatant que l'arme et ses munitions sont exclusivement destinées à leur défense personnelle.

Toute arme, dans les cas prévus par le paragraphe précédent, sera enregistrée et marquée par l'autorité préposée au contrôle, qui délivrera aux personnes dont il s'agit des permis de port d'armes, indiquant le nom du porteur et l'estampille de laquelle l'arme est marquée. Ces permis, révocables en cas d'abus constaté, ne seront délivrés que pour cinq ans, mais pourront être renouvelés.

La règle ci-dessus établie de l'entrée en entrepôt s'appliquera également à la poudre.

Ne pourront être retirés des entrepôts pour être mis en vente que les fusils à silex non rayés ainsi que les poudres communes dites de traite. A chaque sortie d'armes et de munitions de cette nature destinées à la vente, les autorités locales détermineront les régions où ces armes et munitions pourront être vendues. Les régions atteintes par la Traite seront toujours exclues. Les personnes autorisées à faire sortir des armes ou de la poudre des entrepôts s'obligeront à présenter à l'Administration, tous les six mois, des listes détaillées indiquant les destinations qu'ont reçues les dites armes à feu et les poudres déjà vendues, ainsi que les quantités qui restent enmagasin.

## ARTICLE X.

Les Gouvernements prendront toutes les mesures qu'ils jugeront nécessaires pour assurer l'exécution aussi complète que possible des dispositions relatives à l'importation, à la vente, et au transport des armes à feu et des munitions, ainsi que pour en empêcher soit l'entrée et la sortie par leurs frontières intérieures, soit le passage vers les régions où sévit la Traite.

L'autorisation de transit, dans les limites de la zone spécifiée à l'Article VIII, ne pourra être refusée lorsque les armes et munitions doivent passer à travers le territoire d'une Puissance Signataire adhérente occupant la côte, vers des territoires à l'intérieur placés sous la souveraineté ou le Protectorat d'une autre Puissance Signataire ou adhérente, à moins que cette dernière Puissance n'ait un accès direct à la mer par son propre territoire. Si cet accès était complètement interrompu, l'autorisation de transit ne pourra non plus être refusée. Toute demande de transit doit être accompagnée d'une déclaration émanée du Gouvernement de la Puissance ayant des possessions à l'intérieur, et certifiant que les dites armes et munitions ne sont pas destinées à la vente, mais à l'usage des autorités de la Puissance ou de la force militaire nécessaire pour la protection des stations de

exceptions shall be admitted for persons affording sufficient guarantees that the arm and ammunition delivered to them will not be given, assigned, or sold to third persons, and for travellers provided with a declaration of their Government stating that the weapon and ammunition are destined exclusively for their personal defence.

All arms in the cases provided for in the preceding paragraph shall be registered and marked by the authorities appointed for the supervision, who shall deliver to the persons in question licences to bear arms, indicating the name of the bearer and showing the stamp with which the arm is marked. These licences are revocable in case of proved improper use, and will be issued for five years only, but may be renewed.

The rule above set forth as to placing in depôt shall also apply to gunpowder.

From the depôts can be withdrawn for sale only flint-lock guns, with unrifled barrels, and common gunpowders, called trade powders ("poudres de traite"). At each withdrawal of arms and ammunition of this kind for sale, the local authorities shall determine the regions in which these arms and ammunition may be sold. The regions infected by the Slave Trade shall always be excluded. Persons authorized to take arms or powder out of the public depôts (warehouses) shall present to the Administration every six months detailed lists indicating the destinations of the arms and powder sold, as well as the quantities still remaining in the store-houses.

## ARTICLE X.

The Governments shall take all measures they may deem necessary to insure as complete a fulfilment as possible of the provisions respecting the importation, the sale, and transport of fire-arms and ammunition, as well as to prevent either the entry or exit thereof by their inland frontiers, or the passage thereof to regions where the Slave Trade is rife.

The authorization of transit within the limits of the zone specified by Article VIII cannot be withheld when the arms and ammunition are to pass across the territory of a Signatory or adherent Power in the occupation of the coast, towards inland territories placed under the sovereignty or protectorate of another Signatory or adherent Power, unless this latter power have direct access to the sea through its own territory. If this access be completely interrupted, the authorization of transit can no longer be withheld. Any demand of transit must be accompanied by a declaration emanating from the Government of the Power having the inland possessions, and certifying that the said arms and ammunition are not destined for sale, but are for the use of the authorities of such Power, or of the military forces necessary for the protection

missionnaires ou de commerce, ou bien des personnes désignées nominativement dans la déclaration. Toutefois, la Puissance territoriale de la côte se réserve le droit d'arrêter, exceptionnellement et provisoirement, le transit des armes de précision et des munitions à travers son territoire si, par suite de troubles à l'intérieur ou d'autres graves dangers, il y avait lieu de craindre que l'envoi des armes et munitions ne pût compromettre sa propre sûreté.

ARTICLE XI.

Les Puissances se communiqueront les renseignements relatifs au trafic des armes à feu et des munitions, aux permis accordés ainsi qu'aux mesures de répression appliquées dans leurs territoires respectifs.

ARTICLE XII.

Les Puissances s'engagent à adopter ou à proposer à leurs Législatures respectives les mesures nécessaires afin que les contrevenants aux défenses établies par les Articles VIII et IX soient partout punis, ainsi que leurs complices, outre la saisie et la confiscation des armes et munitions prohibées, soit de l'amende, soit de l'emprisonnement, soit de ces deux peines réunies, proportionnellement à l'importance de l'infraction et suivant la gravité de chaque cas.

ARTICLE XIII.

Les Puissances Signataires qui ont en Afrique des possessions en contact avec la zone spécifiée à l'Article VIII, s'engagent à prendre les mesures nécessaires pour empêcher l'introduction des armes à feu et des munitions, par leurs frontières intérieures, dans les régions de la dite zone, tout au moins celle des armes perfectionnées et des cartouches.

ARTICLE XIV.

Le régime stipulé aux Articles VIII à XIII inclusivement restera en vigueur pendant douze ans. Dans le cas où aucune des Parties Contractantes n'aurait, douze mois avant l'expiration de cette période, notifié son intention d'en faire cesser les effets, ni demandé la révision, il continuera de rester obligatoire pendant deux ans, et ainsi de suite, de deux en deux ans.

CHAPITRE II.—ROUTES DES CARAVANES ET TRANSPORTS D'ESCLAVES PAR TERRE.

. . . . . .

of the missionary or commercial stations, or of persons mentioned by name in the declaration. Nevertheless, the territorial Power of the coast retains the right to stop, exceptionally and provisionally, the transit of arms of precision and ammunition across its territory, if in consequence of inland disturbances or other serious danger there is ground for fearing that the dispatch of arms and ammunition might compromise its own safety.

ARTICLE XI.

The Powers shall communicate to each other the information relating to the traffic in fire-arms and ammunition, the licences granted, and the measures of repression in force in their respective territories.

ARTICLE XII.

The Powers undertake to adopt or to propose to their respective Legislatures the measures necessary to insure the punishment everywhere of infringers of the prohibitions laid down in Articles VIII and IX, and that of their accomplices, besides the seizure and confiscation of the prohibited arms and ammunition, either by fine or by imprisonment, or by both penalties together, in proportion to the importance of the infraction, and in accordance with the gravity of each case.

ARTICLE XIII.

The Signatory Powers who have in Africa possessions in contact with the zone specified in Article VIII bind themselves to take the necessary measures for preventing the introduction of fire-arms and ammunition across their inland frontiers into the regions of the said zone, at least that of improved arms and cartridges.

ARTICLE XIV.

The system stipulated in Articles VIII to XIII shall remain in force during twelve years. In case none of the Contracting Parties shall have notified, twelve months before the expiration of this period, its intention of putting an end to it, or shall have demanded its revision, it shall continue to remain obligatory for two more years, and shall thus continue in force from two years to two years.

CHAPTER II.—CARAVAN ROUTES AND THE LAND TRANSPORT OF SLAVES.

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## Chapitre III.—Répression de la Traite sur Mer.

### § I. *Dispositions Générales.*

### ARTICLE XX.

Les Puissances Signataires reconnaissent l'opportunité de prendre d'un commun accord des dispositions ayant pour objet d'assurer plus efficacement la répression de la Traite dans la zone maritime où elle existe encore.

### ARTICLE XXI.

Cette zone s'étend entre, d'une part, les côtes de l'Océan Indien (y compris celles du Golfe Persique et de la Mer Rouge), depuis le Béloutchistan jusqu'à la pointe de Tangalane (Quilimane), et, d'autre part, une ligne conventionnelle qui suit d'abord le méridien de Tangalane jusqu'au point de rencontre avec le 26e degré de latitude sud; se confond ensuite avec ce parallèle, puis contourne l'Ile de Madagascar par l'est en se tenant à 20 milles de la côte orientale et septentrionale, jusqu'à son intersection avec le méridien du Cap d'Ambre. De ce point, la limite de la zone est déterminée par une ligne oblique qui va rejoindre la côte du Béloutchistan, en passant à 20 milles au large du Cap Raz-el-Had.

### ARTICLE XXII.

Les Puissances Signataires du présent Acte Général, entre lesquelles il existe des Conventions particulières pour la suppression de la Traite, se sont mises d'accord pour restreindre les clauses de ces Conventions concernant le droit réciproque de visite, de recherche, et de saisie des navires en mer, à la zone susdite.

### ARTICLE XXIII.

Les mêmes Puissances sont également d'accord pour limiter le droit susmentionné aux navires d'un tonnage inférieur à 500 tonneaux.

Cette stipulation sera révisée dès que l'expérience en aura démontré la nécessité.

### ARTICLE XXIV.

Toutes les autres dispositions des Conventions conclues entre les dites Puissances pour la suppression de la Traite, restent en vigueur pour autant qu'elles ne sont pas modifiées par le présent Acte Général.

## Chapter III.—Repression of the Sea-borne Slave Trade.

### § 1. *General Provisions.*

### ARTICLE XX.

The Signatory Powers acknowledge the opportuneness of taking steps in common for the more effective repression of the Slave Trade in the maritime zone in which it still exists.

### ARTICLE XXI.

This zone extends, on the one hand, between the coasts of the Indian Ocean (those of the Persian Gulf and of the Red Sea included) from Beloochistan to Cape Tangalane (Quilimane), and, on the other hand, a conventional line which first follows the meridian from Tangalane till it meets the 26th degree of south latitude; it is then merged in this parallel, then passes round the Island of Madagascar by the east, keeping 20 miles off the east and north shore, till it crosses the meridian at Cape Ambre. From this point the limit of the zone is determined by an oblique line which extends to the coast of Beloochistan, passing 20 miles off Cape Ras-el-Had.

### ARTICLE XXII.

The Signatory Powers of the present General Act, among whom exist special Conventions for the suppression of the Slave Trade, have agreed to restrict the clauses of these Conventions concerning the reciprocal right of visit, of search, and of capture ("droit de visite, de recherche, et de saisie") of vessels at sea in the above-mentioned zone.

### ARTICLE XXIII.

The same Powers have also agreed to limit the above-mentioned rights to vessels of smaller tonnage than 500 tons. This stipulation shall be revised as soon as experience shall have shown the necessity of such revision.

### ARTICLE XXIV.

All other provisions of the Conventions concluded for the suppression of the Slave Trade between the aforesaid Powers shall remain in force in so far as not modified by the present General Act.

ARTICLE XXV.

Les Puissances Signataires s'engagent à prendre des mesures efficaces pour prévenir l'usurpation de leur pavillon et pour empêcher le transport des esclaves sur les bâtiments autorisés à arborer leurs couleurs.

ARTICLE XXVI.

Les Puissances Signataires s'engagent à prendre toutes les mesures nécessaires pour faciliter le prompt échange des renseignements propres à amener la découverte des personnes qui se livrent aux opérations de la Traite.

ARTICLE XXVII.

Un Bureau International au moins sera créé ; il sera établi à Zanzibar. Les Hautes Parties Contractantes s'engagent à lui faire parvenir tous les documents spécifiés à l'Article XLI, ainsi que les renseignements de toute nature susceptibles d'aider à la répression de la Traite.

ARTICLE XXVIII.

Tout esclave qui se sera réfugié à bord d'un navire de guerre sous pavillon d'une des Puissances Signataires sera immédiatement et définitivement affranchi, sans que cet affranchissement puisse le soustraire à la juridiction compétente, s'il a commis un crime ou délit de droit commun.

ARTICLE XXIX.

Tout esclave retenu contre son gré à bord d'un bâtiment indigène aura le droit de réclamer sa liberté.

Son affranchissement pourra être prononcé par tout agent d'une des Puissances Signataires, à qui le présent Acte Général confère le droit de contrôler l'état des personnes à bord des dits bâtiments, sans que cet affranchissement puisse le soustraire à la juridiction compétente, si un crime ou délit de droit commun a été commis par lui.

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§ II. *Règlement concernant l'Usage du Pavillon et la Surveillance des Croiseurs.*

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1. *Règles pour la Concession du Pavillon aux Bâtiments Indigènes, le Rôle d'Équipage, et le Manifeste des Passagers Noirs.*

ARTICLE XXX.

Les Puissances Signataires s'engagent à exercer une surveillance rigoureuse sur les bâtiments indigènes autorisés à porter

ARTICLE XXV.

The Signatory Powers undertake to adopt effective measures for preventing the usurpation of their flag, and for preventing the transport of slaves on vessels authorized to fly their colours.

ARTICLE XXVI.

The Signatory Powers undertake to adopt all measures necessary for facilitating the rapid exchange of information calculated to bring about the discovery of persons taking part in Slave Trade operations.

ARTICLE XXVII.

At least one International Bureau shall be created ; it shall be established at Zanzibar. The High Contracting Parties undertake to forward to it all the documents specified in Article XLI, as well as all information of any kind likely to assist in the suppression of the Slave Trade.

ARTICLE XXVIII.

Any slave who may have taken refuge on board a ship of war bearing the flag of one of the Signatory Powers shall be immediately and definitively liberated ; such liberation, however, cannot operate to withdraw him from the competent jurisdiction if he have been guilty of any crime or offence at common law.

ARTICLE XXIX.

Every slave detained against his wish on board a native vessel shall have the right to claim his liberty. His liberation may be pronounced by any Agent of any of the Signatory Powers, on whom the present General Act confers the right of ascertaining the status of persons on board such vessels, without this liberation having the effect of withdrawing him from the competent jurisdiction if he have committed any crime or offence at common law.

II. *Regulation concerning the Use of the Flag and Supervision by Cruizers.*

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1. *Rules for the Grant of the Flag to Native Vessels, and as to the Crew Lists and Manifests of Black Passengers on board.*

ARTICLE XXX.

The Signatory Powers undertake to exercise a rigorous watch ("surveillance") over the native vessels authorized to carry their flag in the zone

leur pavillon dans la zone indiquée à l'Article XXI, et sur les opérations commerciales effectuées par ces bâtiments.

ARTICLE XXXI.

La qualification de bâtiment indigène s'applique aux navires qui remplissent une des deux conditions suivantes :—

1. Présenter les signes extérieurs d'une construction ou d'un gréement indigène :

2. Être montés par un équipage dont le capitaine et la majorité des matelots soient originaires d'un des pays baignés par les eaux de l'Océan Indien, de la Mer Rouge, ou du Golfe Persique.

ARTICLE XXXII.

L'autorisation d'aborder le pavillon d'une des dites Puissances ne sera accordée à l'avenir qu'aux bâtiments indigènes qui satisferont à la fois aux trois conditions suivantes :—

1. Les armateurs ou propriétaires devront être sujets ou protégés de la Puissance dont ils demandent à porter les couleurs ;

2. Ils sont tenus d'établir qu'ils possèdent des biens-fonds dans la circonscription de l'autorité à qui est adressée leur demande, ou de fournir une caution solvable pour la garantie des amendes qui pourraient être éventuellement encourues ;

3. Les dits armateurs ou propriétaires, ainsi que le capitaine du bâtiment, devront fournir la preuve qu'ils jouissent d'une bonne réputation et notamment n'avoir jamais été l'objet d'une condamnation pour faits de Traite.

ARTICLE XXXIII.

L'autorisation accordée devra être renouvelée chaque année. Elle pourra toujours être suspendue ou retirée par les autorités de la Puissance dont le bâtiment porte les couleurs.

ARTICLE XXXIV.

L'acte d'autorisation portera les indications nécessaires pour établir l'identité du navire. Le capitaine en sera détenteur. Le nom du bâtiment indigène et l'indication de son tonnage devront être incrustés et peints en caractères latins à la poupe, et là ou les lettres initiales de son port d'attache, ainsi que le numéro d'enregistrement dans la série des numéros de ce port, seront imprimés en noir sur les voiles.

ARTICLE XXXV.

Un rôle d'équipage sera délivré au capitaine du bâtiment au port de départ par l'autorité de la Puissance dont il porte le

indicated in Article XXI, and over the commercial operations carried on by such vessels.

ARTICLE XXXI.

The term "native vessel" applies to vessels fulfilling one of the following conditions :—

1. It shall present the outward appearance of native build or rigging.

2. It shall be manned by a crew of whom the captain and the majority of the seamen belong by origin to one of the countries on the coast of the Indian Ocean, the Red Sea, or the Persian Gulf.

ARTICLE XXXII.

The authorization to carry the flag of one of the said Powers shall in future only be granted to such native vessels as shall satisfy at the same time the three following conditions :—

1. Fitters-out or owners of ships must be either subjects of or persons protected by the Power whose flag they claim to carry.

2. They shall be obliged to prove that they possess real estate situated in the district of the authority to whom their application is addressed, or to supply a solvent security as a guarantee of the payment of the fines which might be incurred.

3. The above-named fitters-out or owners of ships, as well as the captain of the vessel, shall prove that they enjoy a good reputation, and that in particular they have never been condemned for acts of Slave Trade.

ARTICLE XXXIII.

This authorization granted shall be renewed every year. It can at any time be suspended or withdrawn by the authorities of the Power whose colours the vessel carries.

ARTICLE XXXIV.

The act of authorization shall bear the indications necessary to establish the identity of the vessel. The captain shall have the keeping thereof. The name of the native vessel and the indication of its tonnage shall be inlaid and painted in Latin characters on the stern, and on the place where the initials of the name of the port of registry, as well as the registration number in the series of the numbers of that port, shall be printed in black on the sails.

ARTICLE XXXV.

A list of the crew shall be issued to the captain of the vessel at the port of departure by the authorities of the Power whose colours it carries. It shall

pavillon. Il sera renouvelé à chaque armement du bâtiment ou, au plus tard, au bout d'une année, et conformément aux dispositions suivantes :—

1. Le rôle sera, au moment du départ, visé par l'autorité qui l'a délivré ;

2. Aucun Noirne pourra être engagé comme matelot sur un bâtiment sans qu'il ait éte préalablement interrogé par l'autorité de la Puissance dont ce bâtiment porte la pavillon ou, à défaut de celle-ci, par l'autorité territoriale, à l'effet d'établir qu'il contracte un engagement libre ;

3. Cette autorité tiendra la main à ce que la proportion des matelots ou mousses ne soit pas anormale par rapport au tonnage ou au gréement des bâtiments ;

4. L'autorité qui aura interrogé les hommes préalablement à leur départ les inscrira sur le rôle d'équipage, où ils figureront avec le signalement sommaire de chacun d'eux en regard de son nom ;

5. Afin d'empêcher plus sûrement les substitutions, les matelots pourront, en outre, être pourvus d'une marque distinctive.

## ARTICLE XXXVI.

Lorsque le capitaine du bâtiment désirera embarquer des passagers Noirs, il devra en faire la déclaration à l'autorite de la Puissance dont il porte le pavillon ou, à défaut de celle-ci, à l'autorité territoriale. Les passagers seront interrogés et, quand il aura été constaté qu'ils s'embarquent librement, ils seront inscrits sur un manifeste spécial donnant le signalement de chacun d'eux en regard de son nom, et indiquant notamment le sexe et la taille. Les enfants Noirs ne pourront être admis comme passagers qu'autant qu'ils seront accompagnés de leurs parents ou de personnes dont l'honorabilité serait notoire. Au départ le manifeste des passagers sera visé par l'autorité indiquée ci-dessus, après qu'il aura été procédé à un appel. S'il n'y a pas de passagers à bord, mention expresse en sera faite sur le rôle d'équipage.

## ARTICLE XXXVII.

A l'arrivée dans tout port de relâche ou de destination, le capitaine du bâtiment produira devant l'autorité de la Puissance dont il porte le pavillon ou, à défaut de celle-ci, devant l'autorité territoriale, le rôle d'équipage et, s'il y a lieu, les manifestes de passagers antérieurement délivrés. L'autorité contrôlera les passagers arrivés à destination ou s'arrêtant dans un port de relâche, et fera mention de leur débarquement sur le manifeste. Au départ, la même autorité apposera de nouveau son visa au rôle et au manifeste, et fera l'appel des passagers.

be renewed at every fresh venture of the vessel, or, at latest, at the end of a year, and in conformity with the following provisions :—

1. The list shall be examined at the departure of the vessel by the authority which has issued it.

2. No negro can be engaged as a seaman on a vessel without having been beforehand questioned by the authority of the Power whose colours it carries, or, in default thereof, by the territorial authority, with a view to acertain the fact of his having contracted a free engagement.

3. This authority shall see that the proportion of seamen and boys is not out of proportion to the tonnage or rigging.

4. The authorities who shall have questioned the men before their departure shall inscribe them on the list of the crew in which they shall be mentioned, with the summary description of each of them alongside his name.

5. In order the more effectively to prevent any substitution the seamen may, moreover, be provided with a distinctive mark.

## ARTICLE XXXVI.

If the captain of a vessel should desire to embark negro passengers he shall make his declaration thereof to the authority of the Power whose colours he carries, or, in default thereof, to the territorial authority. The passengers shall be interrogated, and after it has been ascertained that they embarked of their own free will they shall be inscribed in a special manifest, bearing the description of each of them alongside their names, and indicating especially the sex and the height. Negro children shall not be admitted as passengers unless they are accompanied by their relations, or by persons whose respectability is well known. At the departure the passenger roll shall be *visé* by the above-said authority after having been called over. If there be no passengers on board, this shall be specially mentioned on the crew list.

## ARTICLE XXXVII.

At the arrival at any port of call or of destination the captain of the vessel shall show to the authority of the Power whose flag he carries, or, in default thereof, to the territorial authority, the crew list and, if need be, the passenger roll last delivered. The authority shall check the passengers arrived at their destination or stopping at a port of call, and shall mention their landing in the roll. At the departure of the vessel the same authority shall affix a fresh *visa* to the list and roll, and call over the passengers.

## ARTICLE XXXVIII.

Sur le littoral Africain et dans les îles adjacentes, aucun passager noir ne sera embarqué à bord d'un bâtiment indigène en dehors des localités où réside une autorité relevant d'une des Puissances Signataires.

Dans toute l'étendue de la zone prévue à l'Article XXI, aucun passager noir ne pourra être débarqué d'un bâtiment indigène hors d'une localité où réside une autorité relevant d'une des Hautes Parties Contractantes et sans que cette autorité assiste au débarquement.

Les cas de force majeure qui auraient déterminé l'infraction à ces dispositions devront être examinés par l'autorité de la Puissance dont le batiment porte les couleurs, ou, à défaut de celle-ci, par l'autorité territoriale du port dans lequel le bâtiment inculpé fait relâche.

## ARTICLE XXXIX.

Les prescriptions des Articles XXXV, XXXVI, XXXVII, et XXXVIII, ne sont pas applicables aux bateaux non pontés entièrement, ayant un maximum de dix hommes d'équipage, et qui satisferont à l'une des deux conditions suivantes :—

1. S'adonner exclusivement à la pêche dans les eaux territoriales ;

2. Se livrer au petit cabotage entre les différents ports de la même Puissance territoriale, sans s'éloigner de la côte à plus de 5 milles.

Ces différents bateaux recevront, suivant les cas, de l'autorité territoriale ou de l'autorité Consulaire, une licence spéciale, renouvelable chaque année et révocable dans les conditions prévues à l'Article XL, et dont le modèle uniforme[1] sera communiqué au Bureau International de Renseignements.

## ARTICLE XL.

Tout acte ou tentative de Traite, légalement constaté à la charge du capitaine, armateur, ou propriétaire d'un bâtiment autorisé à porter le pavillon d'une des Puissances Signataires, ou ayant obtenu la licence prévue à l'Article XXXIX, entraînera le retrait immédiat de cette autorisation ou de cette licence. Toutes les infractions aux prescriptions du paragraphe 2 du Chapitre III seront punies, en outre, des pénalités édictées par les Lois et Ordonnances Spéciales à chacune des Puissances Contractantes.

## ARTICLE XLI.

Les Puissances Signataires s'engagent à déposer au Bureau International de Renseignements les modèles types des documents ci-après :—

## ARTICLE XXXVIII.

On the African coast and on the adjacent islands no negro passenger shall be shipped on board a native vessel except in localities where there is a resident authority belonging to one of the Signatory Powers.

In the whole extent of the zone mentioned in Article XXI of the preceding Act no negro passenger shall be landed from a native vessel except at a place in which there is a resident authority belonging to one of the High Contracting Powers, and unless such authority is present at the landing.

The cases of main force which may have caused an infraction of these provisions shall be examined by the authority of the Power whose colours the vessel carries, or, in default thereof, by the territorial authority of the port at which the vessel in question calls.

## ARTICLE XXXIX.

The provisions of Articles XXXV, XXXVI, XXXVII, and XXXVIII are not applicable to vessels only partially decked, having at most a crew of ten men, and satisfying one of the two conditions following :—

1. That it be exclusively used for fishing within the territorial waters.

2. That it be occupied in the small coasting trade between the different ports of the same territorial Power, and never go further than 5 miles from the coast.

These different boats shall receive, according to the case, from the territorial or Consular authority, a special licence to be renewed every year, and subject to withdrawal under the conditions provided for in Article XL, and the uniform model[1] of which shall be communicated to the International Information Office.

## ARTICLE XL.

All acts or attempted acts of Slave Trade legally brought home to the captain, fitter-out, or owner of a ship authorized to carry the flag of one of the Signatory Powers, or who may have obtained the licence provided for in ARTICLE XXXIX, shall entail the immediate withdrawal of the said authorization or licence. All offences against the provisions of paragraph 2 of Chapter III shall be punished, besides being subject to the penalties enacted by the special Laws and Ordinances of each of the Contracting Powers.

## ARTICLE XLI.

The Signatory Powers undertake to deposit at the International Information Office the specimen forms of the following documents :—

[1] A form was annexed to the General Act.

1. Titre autorisant le port du pavillon ;
2. Rôle d'équipage ;
3. Manifeste des passagers noirs.

Ces documents, dont la teneur peut varier suivant les Règlements propres à chaque pays, devront renfermer obligatoirement les renseignements suivants, libellés dans une langue Européenne :—

1. En ce qui concerne l'autorisation de porter le pavillon :

(*a.*) Le nom, le tonnage, le gréement, et les dimensions principales du bâtiment ;

(*b.*) Le numéro d'inscription et la lettre signalétique du port d'attache ;

(*c.*) La date de l'obtention du permis et la qualité du fonctionnaire qui l'a délivré.

2. En ce qui concerne le rôle d'équipage :

(*a.*) Le nom du bâtiment, du capitaine, et de l'armateur ou des propriétaires ;

(*b.*) Le tonnage du bâtiment ;

(*c.*) Le numéro d'inscription et le port d'attache du navire, sa destination, ainsi que les renseignements spécifiés à l'Article XXV.

3. En ce qui concerne le manifeste des passagers noirs :

Le nom du bâtiment qui les transporte et les renseignements indiqués à l'Article XXXVI, et destinés à bien identifier les passagers.

Les Puissances Signataires prendront les mesures nécessaires pour que les autorités territoriales, ou leurs Consuls, envoient au même Bureau des copies certifiées de toute autorisation d'arborer leur pavillon, dès qu'elle aura été accordée, ainsi que l'avis du retrait dont ces autorisations auraient été l'objet.

Les dispositions du présent Article ne concernent que les papiers destinés aux bâtiments indigènes.

### 2. *De l'Arrêt des Bâtiments Suspects.*

### ARTICLE XLII.

Lorsque les officiers commandant les bâtiments de guerre de l'une des Puissances Signataires auront lieu de croire qu'un bâtiment d'un tonnage inférieur à 500 tonneaux, et rencontré dans la zone ci-dessus indiquée, se livre à la Traite, ou est coupable d'une usurpation de pavillon, ils pourront recourir à la vérification des papiers de bord.

Le présent Article n'implique aucun changement à l'état de choses actuel en ce qui concerne la juridiction dans les eaux territoriales.



1. Licence to carry the flag ;
2. The list of the crew ;
3. The list of the negro passengers.

These documents, the tenour of which may vary according to the different Regulations of each country, shall necessarily contain the following particulars, drawn up in one of the European languages :—

1. As regards the authorization to carry the flag :

(*a.*) The name, tonnage, rig, and the principal dimensions of the vessel ;

(*b.*) The register number and the signal letter of the port of registry ;

(*c.*) The date of obtaining the licence, and the office held by the person who has issued it.

2. As regards the list of the crew :

(*a.*) The name of the vessel, of the captain, and of the fitter-out or of the owner ;

(*b.*) The tonnage of the vessel ;

(*c.*) The register number and the port of registry, its destination, as well as the particulars specified in Article XXV.

3. As regards the list of the negro passengers :

The name of the vessel which conveys them, and the particulars indicated in Article XXXVI, for the proper identification of the passengers.

The Signatory Powers shall take necessary measures so that the territorial authorities or their Consuls may send to the same office certified copies of all authorizations to carry their flag as soon as such authorizations shall have been granted, as well as notices of the withdrawal of any such authorization.

The provisions of the present Article only concern the papers intended for native vessels.

### 2. *The stopping of Suspected Vessels.*

### ARTICLE XLII.

When the officers in command of war-vessels ("bâtiments de guerre") of any of the Signatory Powers have reason to believe that a vessel of tonnage less than 500 tons, and found navigating in the above-indicated zone, takes part in the Slave Trade, or is guilty of the fraudulent use of a flag, they may proceed to the verification of the ship's papers.

The present Article does not imply any change in the present state of things as regards jurisdiction in territorial waters.

ARTICLE XLIII.

Dans ce but, un canot, commandé par un officier de vaisseau en uniforme pourra être envoyé à bord du navire suspect, après qu'on l'aura hélé pour lui donner avis de cette intention.

L'officier envoyé à bord du navire arrêté devra procéder avec tous les égards et tous les ménagements possibles.

ARTICLE XLIV.

La vérification des papiers de bord consistera dans l'examen des pièces suivantes :—

1. En ce qui concerne les bâtiments indigènes, les papiers mentionnés à l'Article XLI.

2. En ce qui concerne les autres bâtiments, les pièces stipulées dans les différents Traités ou Conventions maintenus en vigueur.

La vérification des papiers de bord n'autorise l'appel de l'équipage et des passagers que dans les cas et suivant les conditions prévus à l'Article suivant.

ARTICLE XLV.

L'enquête sur le chargement du bâtiment ou la visite ne peut avoir lieu qu'à l'égard des bâtiments naviguant sous le pavillon d'une des Puissances qui ont conclu, ou viendraient à conclure, les Conventions particulières visées à l'Article XXII, et conformément aux prescriptions de ces Conventions.

ARTICLE XLVI.

Avant de quitter le bâtiment arrêté, l'officier dressera un procès-verbal suivant les formes et dans la langue en usage dans le pays auquel il appartient.

Ce procès-verbal doit être daté et signé par l'officier, et constater les faits.

Le capitaine du navire arrêté, ainsi que les témoins, auront le droit de faire ajouter au procès-verbal toutes explications qu'ils croiront utiles.

ARTICLE XLVII.

Le Commandant d'un bâtiment de guerre qui aurait arrêté un navire sous pavillon étranger doit, dans tous les cas, faire un Rapport à son Gouvernement en indiquant les motifs qui l'ont fait agir.

ARTICLE XLVIII.

Un résumé de ce Rapport ainsi qu'une copie du procès-verbal dressé par l'officier envoyé à bord du navire arrêté seront, le plus

ARTICLE XLIII.

To this end a boat commanded by a naval officer in uniform may be sent on board the suspected vessel after it has been hailed and informed of this intention.

The officer sent on board the vessel which has been stopped shall proceed with all possible consideration and moderation.

ARTICLE XLIV.

The verification of the ship's papers shall consist in the examination of the following documents :—

1. As regards native vessels, the papers mentioned in Article XLI.

2. As regards other vessels, the documents required by the different Treaties or Conventions remaining in force.

The verification of the ship's papers only authorizes the calling over of the crew and passengers in the case and in accordance with the conditions provided for in the following Article.

ARTICLE XLV.

The investigation of the cargo or the search can only take place with respect to a vessel navigating under the flag of one of the Powers which have concluded, or may conclude, special Conventions as mentioned in Article XXII, and in accordance with the provisions of such Conventions.

ARTICLE XLVI.

Before quitting the vessel stopped, the officer shall draw up a minute according to the forms and in the language in use in the country to which he belongs.

This minute shall be dated and signed by the officer, and relate the facts.

The captain of the vessel stopped, as well as the witnesses, shall have the right to cause to be added to the minutes any explanations they may think expedient.

ARTICLE XLVII.

The Commander of a man-of-war who may have stopped a vessel under a foreign flag shall in all cases make a Report thereon to his own Government, and state the grounds upon which he acted.

ARTICLE XLVIII.

A summary of this Report, as well as a copy of the minute drawn up by the officer sent on board the vessel stopped, shall be sent, as soon as

tôt possible, expédiés au Bureau International de Renseignements, qui en donnera communication à l'autorité Consulaire ou territoriale la plus proche de la Puissance dont le navire arrêté en route a arboré le pavillon. Des doubles de ces documents seront conservés aux archives du Bureau.

ARTICLE XLIX.

Si, par suite de l'accomplissement des actes de contrôle mentionnés dans les Articles précédents, le croiseur est convaincu qu'un fait de Traite a été commis à bord durant la traversée ou qu'il existe des preuves irrécusables contre le capitaine ou l'armateur pour l'accuser d'usurpation de pavillon, de fraude, ou de participation à la Traite, il conduira le bâtiment arrêté dans le port de la zone le plus rapproché, où se trouve une autorité compétente de la Puissance dont le pavillon a éte arboré.

Chaque Puissance Signataire s'engage à désigner dans la zone et à faire connaître au Bureau International de Renseignements les autorités territoriales ou Consulaires, ou les Délégués spéciaux qui seraient compétents dans les cas visés ci-dessus.

Le bâtiment soupçonné peut également être remis à un croiseur de sa nation, si ce dernier consent à en prendre charge.

3. *De l'Enquête et du Jugement des Bâtiments saisis.*

ARTICLE L.

L'autorité visée à l'Article précédent, à laquelle le navire arrêté a été remis, procédera à une enquête complète, selon les Lois et Règlements de sa nation, en présence d'un officier du croiseur étranger.

ARTICLE LI.

S'il résulte de cette enquête qu'il y a eu usurpation de pavillon, le navire arrêté restera à la disposition du capteur.

ARTICLE LII.

Si l'enquête établit un fait de Traite défini par la présence à bord d'esclaves destinés à être vendus, ou d'autre faits de Traite prévus par les Conventions particulières, le navire et sa cargaison demeurent sous séquestre, à la garde de l'autorité qui a dirigé l'enquête.

Le capitaine et l'équipage seront déférés aux Tribunaux désignés aux Articles LIV et LVI. Les esclaves seront mis en liberté après qu'un jugement aura été rendu.

Dans les cas prévus par cet Article, il sera disposé des esclaves libérés conformément aux Conventions particulières conclues ou

possible, to the International Information Office, which shall communicate the same to the nearest Consular or territorial authority of the Power whose flag the vessel in question had shown. Duplicates of these documents shall be kept in the archives of the Bureau.

ARTICLE XLIX.

If, in carrying out the supervision mentioned in the preceding Articles, the officer in command of the cruizer is convinced that an act of Slave Trade has been committed on board during the passage, or that irrefutable proofs exist against the captain, or fitter-out, for accusing him of fraudulent use of the flag, of fraud, or participation in Slave Trade, he shall conduct the arrested vessel to the nearest port of the zone where there is a competent authority of the Power whose flag has been used.

Each Signatory Power undertakes to appoint in the zone, and to make known the same at the International Information Office, the territorial or Consular authorities or Special Delegates who are competent in the above-mentioned cases.

The suspected vessel can also, should the case occur, be handed over to a cruizer of its own nation if the latter consents to take charge of it.

3. *Of the Examination into and Trial of Vessels seized.*

ARTICLE L.

The authority referred to in the preceding Article, to which the arrested vessel has been handed over, shall proceed to make a full investigation, according to the Laws and Rules of his country, in the presence of an officer belonging to the foreign cruizer.

ARTICLE LI.

If it is proved by the inquiry that the flag has been fraudulently used, the arrested vessel shall remain at the disposal of its captor.

ARTICLE LII.

If the examination shows that an act of Slave Trade, made clear by the presence on board of slaves destined for sale, or any other Slave Trade offence provided for by special Convention, the vessel and cargo shall remain sequestrated in charge of the authority who shall have directed the inquiry.

The captain and crew shall be handed over to the Tribunals fixed by Articles LIV and LVI. The slaves shall be set at liberty as soon as the Judgment has been delivered.

In the cases provided for by this Article, liberated slaves shall be disposed of in accordance with the special Conventions concluded or to be

à conclure entre les Puissances Signataires. A défaut de ces Conventions, les dits esclaves pourront être remis à l'autorité locale, pour être renvoyés, si c'est possible, dans leur pays d'origine ; sinon cette autorité leur facilitera, autant qu'il dépendra d'elle, les moyens de vivre, et, s'ils le désirent, de se fixer dans la contrée.

ARTICLE LIII.

Si l'enquête prouve que le bâtiment est arrêté illégalement, il y aura lieu de plein droit à une indemnité proportionnelle au préjudice éprouvé par le bâtiment détourné de sa route.

La quotité de cette indemnité sera fixée par l'autorite qui a dirigé l'enquête.

ARTICLE LIV.

Dans le cas où l'officier du navire capteur n'accepterait pas les conclusions de l'enquête effectuée en sa présence, la cause serait, de plein droit, déférée au Tribunal de la nation dont le bâtiment capturé aurait arboré les couleurs.

Il ne sera fait d'exception à cette règle que dans le cas où le différend porterait sur le chiffre de l'indemnité stipulée à l'Article LIII, lequel sera fixé par voie d'arbitrage, ainsi qu'il est spécifié à l'Article suivant.

ARTICLE LV.

L'officier capteur et l'autorité qui aura dirigé l'enquête désigneront, chacun dans les quarante-huit heures, un arbitre, et les deux arbitres choisis auront eux-mêmes vingt-quatre heures pour désigner un sur-arbitre. Les arbitres devront être choisis, autant que possible, parmi les fonctionnaires Diplomatiques, Consulaires, ou judiciaires des Puissances Signataires. Les indigènes se trouvant à la solde des Gouvernements Contractants sont formellement exclus. La décision est prise à la majorité des voix. Elle doit être reconnue comme définitive.

Si la juridiction arbitrale n'est pas constituée dans les délais indiqués, il sera procédé, pour l'indemnité comme pour les dommages-intérêts, conformément aux dispositions de l'Article LVIII, paragraphe 2.

ARTICLE LVI.

Les causes sont déférées, dans le plus bref délai possible, au Tribunal de la nation dont les prévenus ont arboré les couleurs. Cependant les Consuls ou toute autre autorité de la même nation que les prévenus, spécialement commissionnés à cet effet, peuvent être autorisés par leur Gouvernement à rendre les Jugements aux lieu et place des Tribunaux.

concluded between the Signatory Powers. In default of such Conventions, the said slaves shall be handed over to the local authority, to be sent back, if possible, to their country of origin ; if not, this authority shall facilitate for them, in so far as may be in its power, the means of livelihood, and, if they desire it, of settling on the spot.

ARTICLE LIII.

If it should be proved by the inquiry that the vessel has been illegally arrested, clear title will have been shown to an indemnity in proportion to the damages suffered by the vessel being taken out of its course. The amount of this indemnity shall be fixed by the authority which has directed the inquiry.

ARTICLE LIV.

In case the officer of the capturing vessel do not accept the conclusions of the inquiry carried on in his presence, the matter shall be handed over to the Tribunal of the nation whose flag the captured vessel had borne.

No exception shall be made to this rule, unless the disagreement arises in respect of the amount of the indemnity stipulated in Article LIII, and this shall be fixed by arbitration, as specified in the following Article.

ARTICLE LV.

The capturing officer and the authority which has directed the inquiry shall each appoint a referee within forty-eight hours, and the two arbiters shall have twenty-four hours to choose an umpire. The arbiters shall, as far as possible, be chosen from among the Diplomatic, Consular, or Judicial officers of the Signatory Powers. Natives in the pay of the Contracting Governments are formally excluded. The decision shall be taken by the majority of votes, and be considered as final. If the Court of Arbitration is not constituted in the time indicated, the procedure in respect of the indemnity, as in that for the damages, shall be in accordance with the provisions of Article LVIII, paragraph 2.

ARTICLE LVI.

The cases shall be sent forward with the briefest possible delay to the Tribunal of the nation whose colours have been used by the accused. However, the Consuls or any other authority of the same nation as the accused, specially commissioned to this end, may be authorized by their Government to deliver Judgment instead of the Tribunal.

ARTICLE LVII.

La procédure et le Jugement des infractions aux dispositions du Chapitre III auront toujours lieu aussi sommairement que le permettent les Lois et Règlements en vigueur dans les territoires soumis à l'autorité des Puissances Signataires.

ARTICLE LVIII.

Tout Jugement du Tribunal national ou des autorités visées à l'Article LXI déclarant que le navire arrêté ne s'est point livré à la Traite sera exécuté sur le champ, et pleine liberté sera rendue au navire de continuer sa route.

Dans ce cas, le capitaine ou l'armateur du navire arrêté sans motif légitime de suspicion ou ayant été soumis à des vexations, aura le droit de réclamer des dommages-intérêts dont le montant serait fixé de commun accord entre les Gouvernements directement intéressés ou par voie d'arbitrage, et payé dans le délai de six mois à partir de la date du Jugement qui a acquitté la prise.

ARTICLE LIX.

En cas de condamnation, le navire séquestré sera déclaré de bonne prise au profit du capteur.

Le capitaine, l'équipage, et toutes autres personnes reconnus coupables seront punis, selon la gravité des crimes ou délits commis par eux, et conformément à l'Article V.

ARTICLE LX.

Les dispositions des Articles L à LIX ne portent aucune atteinte ni à la compétence, ni à la procédure des Tribunaux spéciaux existants ou de ceux à créer pour connaître des faits de Traite.

ARTICLE LXI.

Les Hautes Parties Contractantes s'engagent à se communiquer réciproquement les instructions qu'elles donneront, en exécution des dispositions du Chapitre III, aux Commandants de leurs bâtiments de guerre naviguant dans les mers de la zone indiquée.

CHAPITRE IV.—PAYS DE DESTINATION DONT LES INSTITUTIONS COMPORTENT L'EXISTENCE DE L'ESCLAVAGE DOMESTIQUE.

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ARTICLE LXVI.

Les navires indigènes portant le pavillon d'un pays mentionnés à l'Article LXII, s'il existe des indices qu'ils se livrent à des

ARTICLE LVII.

The procedure, and judgment of offences against the provisions of Chapter III. shall always be conducted in as summary a manner as is permitted by the Laws and Regulations in force in the territories subject to the authority of the Signatory Powers.

ARTICLE LVIII.

Any Judgment of the national Tribunal or authorities referred to by Article LXI. declaring that the seized vessel did not carry on Slave Trade shall be immediately put in force, and the vessel shall be altogether free to continue its course.

In this case the captain or owner of any vessel seized without legitimate ground of suspicion, or which has been subjected to annoyance, shall have the right of claiming damages, the amount of which shall be fixed by agreement between the Governments directly interested, or by arbitration, and shall be paid within a period of six months from the date of the Judgment acquitting the captured vessel.

ARTICLE LIX.

In case of condemnation, the sequestrated vessel shall be declared lawfully seized for the benefit of the captor.

The captain, crew, and all other persons found guilty shall be punished according to the gravity of the crimes or offences committed by them, and in accordance with Article V.

ARTICLE LX.

The provisions of Articles L. to LIX. do not affect in any way the jurisdiction or procedure of existing special Tribunals, or of those which may hereafter be formed to take cognizance of Slave Trade offences.

ARTICLE LXI.

The High Contracting Parties undertake to make known to each other reciprocally the instructions which they shall give to carry out the provisions of Chapter III. to the Commanders of their men-of-war navigating the seas of the zone referred to.

CHAPTER IV.—COUNTRIES TO WHICH SLAVES ARE SENT, WHOSE INSTITUTIONS RECOGNIZE THE EXISTENCE OF DOMESTIC SLAVERY.

. . . . . .

ARTICLE LXVI.

Native vessels bearing the flag of one of the countries mentioned in Articles LXII., if there is any indication that they are employed in Slave

opérations de Traite, seront soumis par les autorités locales, dans les ports qu'ils fréquentent, à une vérification rigoureuse de leur équipage et des passagers, tant à l'entrée qu'à la sortie. En cas de présence à bord d'esclaves Africains, il sera procédé judiciairement contre le bâtiment et contre toutes personnes qu'il y aura lieu d'inculper. Les esclaves trouvés à bord recevront des lettres d'affranchissement par les soins des autorités qui auront opéré la saisie des navires.

ARTICLE LXVII.

Des dispositions pénales en rapport avec celles prévues par l'Article V seront édictées contre les importateurs, transporteurs, et marchands d'esclaves Africains, contre les auteurs de mutilation d'enfants ou d'adultes mâles et ceux qui en trafiquent, ainsi que contre leurs coauteurs et complices.

ARTICLE LXVIII.

Les Puissances Signataires reconnaissent la haute valeur de la Loi sur la prohibition de la Traite des Noirs, sanctionnée par Sa Majesté l'Empereur des Ottomans le 4 (16) Décembre, 1889 (22 Rebi-ul-Akhir, 1307), et elles sont assurées qu'une surveillance active sera organisée par les autorités Ottomanes, particulièrement sur la côte occidentale de l'Arabie et sur les routes qui mettent cette côte en communication avec les autres possessions de Sa Majesté Impériale en Asie.

ARTICLE LXIX.

Sa Majesté le Schah de Perse consent à organiser une surveillance active dans les eaux territoriales et sur celles des côtes du Golfe Persique et du Golfe d'Oman qui sont placées sous sa souveraineté, ainsi que les routes intérieures qui servent au transport des esclaves. Les Magistrats et les autres autorités recevront à cet effet les pouvoirs nécessaires.

ARTICLE LXX.

Sa Hautesse le Sultan de Zanzibar consent à prêter son concours le plus efficace pour la répression des crimes et délits commis par les trafiquants d'esclaves Africains sur terre comme sur mer. Les Tribunaux institués à cette fin dans le Sultanat de Zanzibar appliqueront strictement les dispositions pénales prévues à l'Article V. Afin de mieux assurer la liberté des esclaves libérés, tant en vertu des dispositions du présent Acte Général que des Décrets rendus en cette matière par Sa Hautesse et ses prédécesseurs, un Bureau d'Affranchissement sera établi à Zanzibar.

Trade operations, shall be submitted by the local authorities in the ports frequented by them to a rigorous verification of their crew and passengers both at arrival and departure. Should African slaves be on board, judicial proceedings shall be taken against the vessel and against all persons who may be implicated. Slaves found on board shall receive letters of liberation through the authorities who have carried out the seizure of the vessels.

ARTICLE LXVII.

Penal provisions in connection with those provided for by Article V. shall be published against persons importing, transporting, and trading in African slaves, against the mutilators of children or of male adults, and those who traffic in them, as well as against their associates and accomplices.

ARTICLE LXVIII.

The Signatory Powers recognize the great importance of the Law respecting the prohibition of the Slave Trade sanctioned by His Majesty the Emperor of the Ottomans of the 4th (16th) December, 1889 (22 Rebi-ul-Akhir, 1307), and they are assured that an active supervision will be organized by the Ottoman authorities, especially on the west coast of Arabia and on the routes which place this coast in communication with the other possessions of His Imperial Majesty in Asia.

ARTICLE LXIX.

His Majesty the Shah of Persia consents to organize an active supervision in the territorial waters and those off the coast of the Persian Gulf and Gulf of Oman which are under his sovereignty, and on the inland routes which serve for the transport of slaves. The Magistrates and other authorities shall, with this view, receive the necessary powers.

ARTICLE LXX.

His Highness the Sultan of Zanzibar consents to give his most effective support for the repression of crimes and offences committed by African slave-traders on land as well as at sea. The Tribunals created for this purpose in the Sultanate of Zanzibar shall rigorously apply the penal provisions mentioned in Article V. In order the better to insure the freedom of liberated slaves, both in virtue of the provisions of the present General Act and of the Decrees adopted in this matter by His Highness and his predecessors, a Liberation Office shall be established at Zanzibar.

ARTICLE LXXI.

Les Agents Diplomatiques et Consulaires, et les officiers de marine des Puissances Contractantes prêteront, dans les limites des Conventions existantes, aux autorités locales leur concours, afin d'aider à réprimer la Traite là où elle existe encore; ils auront le droit d'assister aux procès de Traite qu'ils auront provoqués, sans pouvoir prendre part à la délibération.

ARTICLE LXXII.

Des Bureaux d'Affranchissement ou des institutions qui en tiennent lieu seront organisés par les Administrations des pays de destination des esclaves Africains, aux fins déterminées à l'Article XVIII.

ARTICLE LXXIII.

Les Puissances Signataires s'étant engagées à se communiquer tous les renseignements utiles pour combattre la Traite, les Gouvernements que concernent les dispositions du présent Chapitre échangeront périodiquement avec les autres Gouvernements les données statistiques relatives aux esclaves arrêtés et libérés, ainsi que les mesures législatives ou administratives prises afin de réprimer la Traite.

CHAPITRE V.—INSTITUTIONS DESTINÉES À ASSURER L'EXÉCUTION DE L'ACTE GÉNERAL.

§ I. *Du Bureau International Maritime.*

ARTICLE LXXIV.

Conformément aux dispositions de l'Article XXVII, il est institué à Zanzibar un Bureau International où chacune des Puissances Signataires pourra se faire représenter par un Délégué.

ARTICLE LXXV.

Le Bureau sera constitué dès que trois Puissances auront désigné leur Représentant.

Il élaborera un Règlement fixant le mode d'exercice de ses attributions. Ce Règlement sera immédiatement soumis à la sanction des Puissances Signataires qui auront notifié leur intention de s'y faire représenter et qui statueront à cet égard dans le plus bref délai possible.

ARTICLE LXXVI.

Les frais de cette institution seront répartis, à parts égales, entre les Puissances Signataires mentionnées à l'Article précédent.

ARTICLE LXXI.

Diplomatic and Consular Agents and the naval officers of the Contracting Powers shall, within the limits of existing Conventions, give their assistance to the local authorities in order to assist in repressing the Slave Trade where it still exists. They shall be entitled to be present at trials for slave-trading brought about at their instance, without being, however, entitled to take part in the deliberations.

ARTICLE LXXII.

Liberation Offices, or institutions in lieu thereof, shall be organized by the Administrations of the countries to which African slaves are sent, for the purposes specified by Article XVIII.

ARTICLE LXXIII.

The Signatory Powers having undertaken to communicate to each other all information useful for the repression of the Slave Trade, the Governments whom the present Chapter concerns shall periodically exchange with the other Governments statistical data, relating to slaves intercepted and liberated, and to the legislative and administrative measures which have been taken for suppressing the Slave Trade.

CHAPTER V.—INSTITUTIONS INTENDED TO INSURE THE EXECUTION OF THE GENERAL ACT.

§ 1. *Of the International Maritime Office.*

ARTICLE LXXIV.

In accordance with the provisions of Article XXVII, an International Office is instituted at Zanzibar, in which each of the Signatory Powers may be represented by a Delegate.

ARTICLE LXXV.

The Office shall be constituted as soon as three Powers have appointed their Representatives.

It shall draw up Regulations fixing the mode of exercising its functions. These Regulations shall immediately be submitted for the approval of those Signatory Powers who shall have notified their intention of being represented in this Office. They shall decide as to their intention within the shortest possible time.

ARTICLE LXXVI.

The expenses of this institution shall be divided in equal parts among the Signatory Powers mentioned in the preceding Article.

## ARTICLE LXXVII.

Le Bureau de Zanzibar aura pour mission de centraliser tous les documents et renseignements qui seraient de nature à faciliter la répression de la Traite dans la zone maritime.

A cet effet, les Puissances Signataires s'engagent à lui faire parvenir, dans le plus bref délai possible :—

1. Les documents spécifiés à l'Article XLI.

2. Le résumé des Rapports et la copie des procès-verbaux visés à l'Article XLVIII.

3. La liste des autorités territoriales ou Consulaires et des Délégués spéciaux compétents pour procéder à l'égard des bâtiments arrêtés, aux termes de l'Article XLIX.

4. La copie des Jugements et Arrêts de Condamnation rendus conformément à l'Article LVIII.

5. Tous les renseignements propres à amener la découverte des personnes qui se livrent aux opérations de la Traite dans la zone susdite.

## ARTICLE LXXVIII.

Les archives du Bureau seront toujours ouvertes aux officiers de la marine des Puissances Signataires autorisés à agir dans les limites de la zone définie à l'Article XXI, de même qu'aux autorités territoriales ou judiciaires et aux Consuls spécialement désignés par leurs Gouvernements.

Le Bureau devra fournir aux officiers et agents étrangers autorisés à consulter ses archives, les traductions en une langue Européenne des documents qui seraient rédigés dans une langue Orientale.

Il fera les communications prévues à l'Article XLVIII.

## ARTICLE LXXIX.

Des Bureaux auxiliaires en rapport avec le Bureau de Zanzibar pourront être établis dans certaines parties de la zone, en vertu d'un accord préalable entre les Puissances intéressées.

Ils seront composés des Délégués de ces Puissances et établis conformément aux Articles LXXV, LXXVI, et LXXVIII.

Les documents et renseignements spécifiés à l'Article LXXVII, en tant qu'ils concernent la partie afférente de la zone, leur seront envoyés directement par les autorités territoriales et Consulaires de cette région, sans préjudice de la communication au Bureau de Zanzibar prévue par le même Article.

## ARTICLE LXXVII.

The object of the Office at Zanzibar shall be to centralize all documents and information of a nature to facilitate the repression of the Slave Trade in the maritime zone. For this purpose the Signatory Powers undertake to forward within the shortest possible time :—

1. The documents specified in Article XLI.

2. Summaries of the Reports and copies of the Minutes referred to in Article XLVIII.

3. The list of the territorial or Consular authorities and special Delegates competent to take action as regards vessels seized according to the terms of Article XLIX.

4. Copies of Judgments and condemnations in accordance with Article LVIII.

5. All information which might lead to the discovery of persons engaged in the Slave Trade in the above-mentioned zone.

## ARTICLE LXXVIII.

The archives of the Office shall always be open to the naval officers of the Signatory Powers authorized to act within the limits of the zone defined in Article XXI, as well as to the territorial or judicial authorities, and to Consuls specially appointed thereto by their Governments.

The Office shall supply to foreign officers and agents authorized to consult its archives translations into a European language of documents written in an Oriental language. It shall make the communications provided for in Article XLVIII.

## ARTICLE LXXIX.

Auxiliary Offices in communication with the Office at Zanzibar may be established in certain parts of the zone, on agreement beforehand between the interested Powers.

They shall be composed of Delegates of these Powers, and established in conformity with Articles LXXV, LXXVI, and LXXVIII.

The documents and information specified in Article LXXVII, in so far as relating to a part of the zone specially concerned, shall be sent to them direct by the territorial and Consular authorities of the region in question without this dispensing the latter from the duty of communicating the same to the Zanzibar Head Office, as provided for by the same Article.

ARTICLE LXXX.

Le Bureau de Zanzibar dressera, dans les deux premiers mois de chaque année, un Rapport sur ses opérations et celles des Bureaux auxiliaires pendant l'année écoulée.

§ II. *De l'Échange entre les Gouvernements des Documents et Renseignements relatifs á la Traite.*

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§ III. *De la Protection des Esclaves Libérés.*

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CHAPITRE VI.—MESURES RESTRICTIVES DU TRAFIC DES SPIRITUEUX.

. . . . . .

CHAPITRE VII.—DISPOSITIONS FINALES.

ARTICLE XCVI.

Le présent Acte Général abroge toutes stipulations contraires des Conventions antérieurement conclues entre les Puissances Signataires.

ARTICLE XCVII.

Les Puissances Signataires, sans préjudice de ce qui est stipulé aux Articles XIV, XXIII, et XCII, se réservent d'introduire au présent Acte Général, ultérieurement et d'un commun accord, les modifications ou améliorations dont l'utilité serait démontrée par l'expérience.

ARTICLE XCVIII.

Les Puissances qui n'ont pas signé le présent Acte Général pourront être admises à y adhérer.

Les Puissances Signataires se réservent de mettre à cette adhésion telles conditions qu'elles jugeraient nécessaires.

Si aucune condition n'est stipulée, l'adhésion emporte de plein droit l'acceptation de toutes les obligations et l'admission à tous les avantages stipulés par le présent Acte Général.

Les Puissances se concerteront sur les démarches à faire pour amener l'adhésion des États dont le concours serait nécessaire ou utile pour assurer l'exécution complète de l'Acte Général.

L'adhésion se fera par un Acte séparé. Elle sera notifiée par la voie diplomatique au Gouvernement de Sa Majesté le Roi des Belges, et par celui-ci à tous les États Signataires et adhérents.



ARTICLE LXXX.

The Office at Zanzibar shall draw up in the two first months of every year a Report upon its own operations, and those of the auxiliary Offices, during the past twelve months.

§ II. *Of the Exchange between the Governments of Documents and Information relating to the Slave Trade.*

. . . . . .

§ III. *Of the Protection of Liberated Slaves.*

. . . . . .

CHAPTER VI.—RESTRICTIVE MEASURES CONCERNING THE TRAFFIC IN SPIRITUOUS LIQUORS.

. . . . . .

CHAPTER VII.—FINAL PROVISIONS.

ARTICLE XCVI.

The present General Act repeals all contrary stipulations of Conventions previously concluded between the Signatory Powers.

ARTICLE XCVII.

The Signatory Powers, without prejudice to the stipulations contained in Articles XIV, XXIII, and XCII, reserve the right of introducing into the present General Act later on, and by common agreement, such modifications or improvements as experience may prove to be useful.

ARTICLE XCVIII.

Powers who have not signed the present General Act shall be allowed to adhere to it.

The Signatory Powers reserve the right to impose such conditions as they may deem necessary to their adhesion.

If no conditions should be stipulated, adhesion implies acceptance of all the obligations and admission to all the advantages stipulated by the present General Act.

The Powers shall concert among themselves as to the steps to be taken to procure the adhesion of States whose co-operation may be necessary or useful in order to insure the complete execution of the General Act.

Adhesion shall be effected by a separate Act. It shall be notified through the Diplomatic channel to the Government of the King of the Belgians, and by them to all the Signatory and adherent States.

## ARTICLE XCIX.

Le présent Acte Général sera ratifié dans un délai qui sera le plus court possible et qui, en aucun cas, ne pourra excéder un an.

Chaque Puissance adressera sa ratification au Gouvernement de Sa Majesté le Roi des Belges, qui en donnera avis à toutes les autres Puissances Signataires du présent Acte Général.

Les ratifications de toutes les Puissances resteront déposées dans les archives du Royaume de Belgique.

Aussitôt que toutes les ratifications auront été produites, ou au plus tard un an après la signature du présent Acte Général, il sera dressé Acte du dépôt dans un Protocole qui sera signé par les Représentants de toutes les Puissances qui auront ratifié.

Une copie certifiée de ce Protocole sera adressée à toutes les Puissances intéressées.

## ARTICLE C.

Le présent Acte Général entrera en vigueur dans toutes les possessions des Puissances Contractantes le soixantième jour à partir de celui où aura été dressé le Protocole de dépôt prévu à l'Article précédent.

En foi de quoi, les Plénipotentiaires respectifs ont signé le présent Acte Général et y ont apposé leur cachet.

Fait à Bruxelles, le 2e jour du mois de Juillet, 1890.

[SIGNATURES.]

*Declaration.*

Les Puissances réunies en Conférence à Bruxelles, qui ont ratifié l'Acte Général de Berlin du 26 Février, 1885, ou qui y ont adhéré.

Après avoir arrêté et signé de concert, dans l'Acte Général de ce jour, un ensemble de mesures destinées à mettre un terme à la Traite des Nègres sur terre comme sur mer et à améliorer les conditions morales et matérielles d'existence des populations indigènes,

Considérant que l'exécution des dispositions qu'elles ont prises dans ce but impose à certaines d'entre elles, qui ont des possessions ou exercent des Protectorats dans le bassin conventionnel du Congo, des obligations qui exigent impérieusement, pour y faire face, des ressources nouvelles.

Sont convenues de faire la Déclaration suivante :—

Les Puissances Signataires ou adhérentes qui ont des possessions ou exercent des Protectorats dans le dit bassin

## ARTICLE XCIX.

The present General Act shall be ratified within the shortest possible period, which shall not in any case exceed one year.

Each Power shall address its ratification to the Government of the King of the Belgians, who shall give notice thereof to all the other Signatory Powers to the present General Act.

The ratifications of all the Powers shall remain deposited in the archives of the Kingdom of Belgium.

As soon as all the ratifications shall have been furnished, or at latest one year after the signature of the present General Act, their delivery shall be recorded in a Protocol which shall be signed by the Representatives of all the Powers which have ratified.

A certified copy of this Protocol shall be forwarded to all the Powers interested.

## ARTICLE C.

The present General Act shall come into force in all the possessions of the Contracting Powers on the sixtieth day, counting from the day on which the Protocol provided for in the preceding Article is drawn up.

In witness whereof the respective Plenipotentiaries have signed the present General Act, and have thereto affixed their seal.

Done at Brussels the 2nd day of the month of July, 1890.

[SIGNATURES.]

*Declaration.*

The Powers assembled in Conference at Brussels, who have ratified the General Act of Berlin of the 26th February, 1885, or who have acceded thereto,

After having drawn up and signed in concert, in the General Act of this day, a collection of measures intended to put an end to the Slave Traffic by land as well as by sea, and to improve the moral and material conditions of existence of native races,

Taking into consideration that the execution of the provisions which they have adopted with this object imposes on some of them who have possessions or Protectorates in the conventional basin of the Congo, obligations which absolutely demand new resources to meet them,

Have agreed to make the following Declaration :—

The Signatories or acceding Powers who have possessions or Protectorates

conventionnel du Congo pourront, pour autant qu'une autorisation leur soit nécessaire à cette fin, y établir sur les marchandises importées des droits dont le tarif ne pourra dépasser un taux équivalent à 10 pour cent de la valeur au port d'importation, à l'exception toutefois des spiritueux, qui sont régis par les dispositions du Chapitre VI de l'Acte Général de ce jour.

Après la signature du dit Acte Général, une négociation sera ouverte entre les Puissances qui ont ratifié l'Acte Général de Berlin ou qui y ont adhéré, à l'effet d'arrêter, dans la limite maxima de 10 pour cent de la valeur, les conditions du régime Douanier à instituer dans le bassin conventionnel du Congo.

Il reste néanmoins entendu :—

1. Qu'aucun traitement différentiel ni droit de transit ne pourront être établis ;

2. Que, dans l'application du régime Douanier qui sera convenu, chapue Puissance s'attachera à simplifier, autant que possible, les formalités et à faciliter les opérations du commerce ;

3. Que l'arrangement à résulter de la négociation prévue restera en vigueur pendant quinze ans à partir de la signature de la présente Déclaration.

A l'expiration de ce terme et à défaut d'un nouvel accord, les Puissances Contractantes se retrouveront dans les conditions prévues par l'Article IV de l'Acte Général de Berlin, la faculté d'imposer à un maximum de 10 pour cent les marchandises importées dans le bassin conventionnel du Congo leur restant acquise.

Les ratifications de la présente Déclaration seront échangées en même temps que celles de l'Acte Général du mêne jour.

En foi de quoi, les soussignés Plénipotentiaires ont dressé la présente Déclaration et y ont apposé leur cachet.

Fait à Bruxelles, le 2e jour du mois de Juillet, 1890.

[Signatures.]

in the said Conventional basin of the Congo shall be able, so far as authority is required to this end, to establish duties upon imported goods, the scale of which shall not exceed a rate equivalent to 10 per cent. *ad valorem* at the port of entry, always excepting spirituous liquors, which are regulated by the provisions of Chapter VI of the General Act of this day.

After the signing of the said General Act, negotiations shall be opened between the Powers who have ratified the General Act of Berlin or who have acceded to it, in order to draw up, within a maximum limit of the 10 per cent. *ad valorem*, the system of Customs Regulations to be established in the conventional basin of the Congo.

Nevertheless it is understood :—

1. That no differential treatment or transit duty shall be established ;

2. That in applying the Customs Regulations which are to be agreed upon, each Power will undertake to simplify formalities as much as possible, and to facilitate trade operations ;

3. That the arrangement resulting from the proposed negotiations shall remain in force for fifteen years from the signing of the present Declaration.

At the expiration of this term, and failing a fresh Agreement, the Contracting Powers will return to the conditions provided for by Article IV of the General Act of Berlin, retaining the power of imposing duties up to a maximum of 10 per cent. upon goods imported into the conventional basin of the Congo.

The ratifications of the present Declaration shall be exchanged at the same time as those of the General Act of this day.

In faith of which the undersigned Plenipotentiaries have drawn up the present Declaration, and have affixed hereto their seal.

Done at Brussels, the 2nd day of the month of July, 1890.

[Signatures.]

# 16. FOREIGN ENLISTMENT ACT, 1870.

(33 & 34 Vict. ch. 90.)

AN ACT TO REGULATE THE CONDUCT OF HER MAJESTY'S SUBJECTS DURING THE EXISTENCE OF HOSTILITIES BETWEEN FOREIGN STATES WITH WHICH HER MAJESTY IS AT PEACE. [August 9, 1870.]

WHEREAS it is expedient to make provision for the regulation of the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

*Preliminary.*

1. This Act may be cited for all purposes as "The Foreign Enlistment Act, 1870."

2. This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.

3. This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation, and the time at which this Act comes into operation in any place is, as respects such place, in this Act referred to as the commencement of this Act.

*Illegal Enlistment.*

4. If any person, without the license of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this Act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

5. If any person, without the license of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to

accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

7. If the master or owner of any ship, without the license of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this Act referred to as illegally enlisted persons; that is to say,

(1) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the license of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state:

(2) Any person, being a British subject, who, without the license of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:

(3) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:

Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue; that is to say,

(1) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour: and

(2) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace: and

(3) All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship.

*Illegal Shipbuilding and Illegal Expeditions.*

8. If any person within Her Majesty's dominions, without the license of Her Majesty, does any of the following acts; that is to say,—

(1) Builds or agrees to build, or causes to be built any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or

(2) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or

(3) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or

(4) Despatches, or causes or allows to be despatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state:

Such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue:

(1) The offender shall be punishable by fine and imprisonment or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

(2) The ship in respect of which any such offence is committed, and her equipment, shall be forfeited to her Majesty:

Provided that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping if he satisfies the conditions following; (that is to say),

(1) If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State:

(2) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such ship shall not be despatched, delivered, or removed without the license of Her Majesty until the termination of such war as aforesaid.

9. Where any ship is built by order of or on behalf of any foreign state when at war with a friendly state, or is delivered to or to the order of such foreign state, or any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state.

10. If any person within the dominions of Her Majesty, and without the license of Her Majesty,—

By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state,—

Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

11. If any person within the limits of Her Majesty's dominions, and without the license of Her Majesty,—

Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, the following consequences shall ensue:

(1) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

(2) All ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

12. Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender.

13. The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years.

*Illegal Prize.*

14. If during the continuance of any war in which Her Majesty may be neutral, any ship, goods, or merchandize captured as prize of war within the territorial jurisdiction of Her Majesty, in violation of the neutrality of this

realm, or captured by any ship which may have been built, equipped, commissioned, or despatched, or the force of which may have been augmented, contrary to the provisions of this Act, are brought within the limits of Her Majesty's dominions by the captor, or any agent of the captor, or by any person having come into possession thereof with knowledge that the same was prize of war so captured as aforesaid, it shall be lawful for the original owner of such prize, or his agent or for any person authorised in that behalf by the Government of the foreign state to which such owner belongs, to make application to the Court of Admiralty for seizure and detention of such prize, and the court shall, on due proof of the facts, order such prize to be restored.

Every such order shall be executed and carried into effect in the same manner, and subject to the same right of appeal as in case of any order made in the exercise of the ordinary jurisdiction of such court; and in the meantime and until a final order has been made on such application the court shall have power to make all such provisional and other orders as to the care or custody of such captured ship, goods, or merchandize, and (if the same be of perishable nature, or incurring risk of deterioration) for the sale thereof, and with respect to the deposit or investment of the proceeds of any such sale, as may be made by such court in the exercise of its ordinary jurisdiction.

*General Provision.*

15. For the purposes of this Act, a license by Her Majesty shall be under the sign manual of Her Majesty, or be signified by Order in Council or by proclamation of Her Majesty.

*Legal Procedure.*

16. Any offence against this Act shall, for all purposes of and incidental to the trial and punishment of any person guilty of any such offence, be deemed to have been committed either in the place in which the offence was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offence may be.

17. Any offence against this Act may be described in any indictment or other document relating to such offence, in cases where the mode of trial requires such a description, as having been committed at the place where it was wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the county, city, or place in which the trial is held.

18. The following authorities, that is to say, in the United Kingdom any judge of a superior court, in any other place within the jurisdiction of any British court of justice, such court, or, if there are more courts than one, the court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term "warrant," direct that any offender charged with an offence against this Act shall be removed to some other place in Her Majesty's dominions for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interests of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if his offence had been committed at such place.

Any warrant for the purposes of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant, and to deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall, during the time of his removal under any such warrant as aforesaid, be deemed to be in the legal custody of the person or persons empowered to remove him.

19. All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of this Act shall require the sanction of the Secretary of State or such chief executive authority as is in this Act mentioned, and shall be had in the Court of Admiralty, and not in any other court; and the Court of Admiralty shall, in addition to any

power given to the court by this Act, have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

20. Where any offence against this Act has been committed by any person by reason whereof a ship, or ship and equipment, or arms and munitions of war, has or have become liable to forfeiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender in any court having jurisdiction of the offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture because proceedings are taken against the offender.

21. The following officers, that is to say,

(1) Any officer of customs in the United Kingdom, subject nevertheless to any special or general instructions from the Commissioners of Customs or any officer of the Board of Trade, subject nevertheless to any special or general instructions from the Board of Trade;

(2) Any officer of customs or public officer in any British possession, subject nevertheless to any special or general instructions from the governor of such possession;

(3) Any commissioned officer on full pay in the military service of the Crown, subject nevertheless to any special or general instructions from his commanding officer;

(4) Any commissioned officer on full pay in the naval service of the Crown, subject nevertheless to any special or general instructions from the Admiralty or his superior officer,

may seize or detain any ship liable to be seized or detained in pursuance of this Act, and such officers are in this Act referred to as the "local authority"; but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom such court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

22. Any officer authorised to seize or detain any ship in respect of any offence against this Act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police, or any officers of Her Majesty's army or navy or marines, or any excise officers or officers of customs, or any harbour-master or dock-master, or any officers having authority by law to make seizures of ships, and may put on board any ship so seized or detained any one or more of such officers to take charge of the same, and to enforce the provisions of this Act, and any officer seizing or detaining any ship under this Act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person, shall be freely and fully indemnified as well against the Queen's Majesty's, Her heirs and successors, as against all persons so killed, maimed, or hurt.

23. If the Secretary of State or the chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, such Secretary of State or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has been either condemned or released by process of law, or in manner herein-after mentioned.

The owner of the ship so detained, or his agent, may apply to the Court of Admiralty for its release, and the court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the court that the ship was

not and is not being built, commissioned, or equipped or intended to be despatched contrary to this Act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, then the ship shall be detained till released by order of the Secretary of State or chief executive authority.

The court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the court that the ship shall not be employed contrary to this Act, notwithstanding that the applicant may have failed to establish to the satisfaction of the court that the ship was not and is not being built, commissioned, or intended to be despatched contrary to this Act. The Secretary of State or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State or chief executive authority that the ship shall not be employed contrary to this Act, or may release the ship without such security if the Secretary of State or chief executive authority think fit so to release the same.

If the court be of opinion that there was not reasonable and probable cause for the detention, and if no such cause appear in the course of the proceedings, the court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the court, and any amount so assessed shall be payable by the Commissioners of the Treasury out of any moneys legally applicable for that purpose. The Court of Admiralty shall also have power to make a like order for the indemnity of the owner, on the application of such owner to the court, in a summary way, in cases where the ship is released by the order of the Secretary of State or the chief executive authority, before any application is made by the owner or his agent to the court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is restored in pursuance of this section all proceedings for such condemnation shall be stayed; and where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non-commissioned ship despatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character has taken place in this country.

24. Where it is represented to any local authority, as defined by this Act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of such detention to the Secretary of State or chief executive authority.

Upon the receipt of such communication the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that such ship was built, commissioned, or equipped or intended to be despatched in contravention of this Act, he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the

payment of costs and damages in respect of the detention upon application to the Court of Admiralty in a summary way in like manner as he is entitled to be indemnified where the Secretary of State having issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the court for such release.

25. The Secretary of State or the chief executive authority may, by warrant, empower any person to enter any dockyard or other place within Her Majesty's dominions and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign state at war with a friendly state, and to search such ship.

26. Any powers or jurisdiction by this Act given to the Secretary of State may be exercised by him throughout the dominions of Her Majesty, and such powers and jurisdiction may also be exercised by any of the following officers, in this Act referred to as the chief executive authority, within their respective jurisdiction; that is to say,

(1) In Ireland by the Lord Lieutenant or other the chief governor or governors of Ireland for the time being, or the chief secretary to the Lord Lieutenant:

(2) In Jersey by the Lieutenant Governor:

(3) In Guernsey, Alderney, and Sark, and the dependent islands by the Lieutenant Governor:

(4) In the Isle of Man by the Lieutenant Governor:

(5) In any British possession by the Governor:

A copy of any warrant issued by a Secretary of State or by any officer authorised in pursuance of this Act to issue such warrant in Ireland, the Channel Islands, or the Isle of Man shall be laid before Parliament.

27. An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the court as a Court of Admiralty.

28. Subject to the provisions of this Act providing for the award of damages in certain cases in respect of the seizure or detention of a ship by the Court of Admiralty no damages shall be payable, and no officer or local authority shall be responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this Act.

29. The Secretary of State shall not, nor shall the chief executive authority, be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act, or be examinable as a witness, except at his own request, in any court of justice in respect of the circumstances which led to the issue of the warrant.

*Interpretation Clause.*

30. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say,

"Foreign state" includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people:

"Military service" shall include military telegraphy and any other employment whatever, in or in connexion with any military operation:

"Naval service" shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store ship, privateer or ship under letters of marque; and as respects a ship, include any user of a ship as a transport, store ship, privateer or ship under letters of marque:

"United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands:

"British possession" means any territory, colony, or place being part of Her Majesty's dominions, and not part of the United Kingdom, as defined by this Act:

"The Secretary of State" shall mean any one of Her Majesty's Principal Secretaries of State:

"The Governor" shall as respects India mean the Governor General or the governor of any presidency, and where a British possession consists of several constituent colonies, mean the Governor General of the whole possession or the Governor of any of the constituent colonies, and as respects any other British possession it shall mean the officer for the time being administering the government of such possession; also any person acting for or in the capacity of a governor shall be included under the term "Governor":

"Court of Admiralty" shall mean the High Court of Admiralty of England or Ireland, the Court of Session of Scotland, or any vice-Admiralty Court within Her Majesty's dominions:

"Ship" shall include any description of boat, vessel, floating battery, or floating craft; also any description of boat, vessel, or other craft or battery, made to move either on the surface of or under water, or sometimes on the surface of and sometimes under water:

"Building" in relation to a ship shall include the doing any act towards or incidental to the construction of a ship, and all words having relation to building shall be construed accordingly:

"Equipping" in relation to a ship shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service, and all words relating to equipping shall be construed accordingly:

"Ship and equipment" shall include a ship and everything in or belonging to a ship:

"Master" shall include any person having the charge or command of a ship.

*Repeal of Acts, and Saving Clauses.*

31. From and after the commencement of this Act, an Act passed in the fifty-ninth year of the reign of His Late Majesty King George the Third, chapter sixty-nine, intituled "An Act to prevent the enlisting or engagement of His Majesty's subject to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without his Majesty's license," shall be repealed: Provided that such repeal shall not affect any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into operation, nor the institution of any investigation or legal proceeding, or any other remedy for enforcing any such penalty, forfeiture, or punishment as aforesaid.

32. Nothing in this Act contained shall subject to forfeiture any commissioned ship of any foreign state, or give to any British court over or in respect of any ship entitled to recognition as a commissioned ship of any foreign state any jurisdiction which it would not have had if this Act had not passed.

33. Nothing in this Act contained shall extend or be construed to extend to subject to any penalty any person who enters into the military service of any prince, state, or potentate in Asia, with such leave or license as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of princes, states, or potentates in Asia.

# 17. TERRITORIAL WATERS JURISDICTION ACT, 1878.

(41 & 42 Vict. ch. 73.)

AN ACT TO REGULATE THE LAW RELATING TO THE TRIAL OF OFFENCES COMMITTED ON THE SEA WITHIN A CERTAIN DISTANCE OF THE COASTS OF HER MAJESTY'S DOMINIONS. [August 16, 1878.]

WHEREAS the rightful jurisdiction of Her Majesty, her heirs and successors, extends and has always extended over the open seas adjacent to the coasts of the United Kingdom and of all other parts of Her Majesty's dominions to such a distance as is necessary for the defence and security of such dominions:

And whereas it is expedient that all offences committed on the open sea within a certain distance of the coasts of the United Kingdom and of all other parts of Her Majesty's dominions, by whomsoever committed, should be dealt with according to law:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Territorial Waters Jurisdiction Act, 1878.

2. An offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly.

3. Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and who is charged with any such offence as is declared by this Act to be within the jurisdiction of the Admiral, shall not be instituted in any court of the United Kingdom, except with the consent of one of Her Majesty's Principal Secretaries of State, and on his certificate that the institution of such proceedings is in his opinion expedient, and shall not be instituted in any of the dominions of Her Majesty out of the United Kingdom, except with the leave of the Governor of the part of the dominions in which such proceedings are proposed to be instituted, and on his certificate that it is expedient that such proceedings should be instituted.

4. On the trial of any person who is not a subject of Her Majesty for an offence declared by this Act to be within the jurisdiction of the Admiral, it shall not be necessary to aver in any indictment or information on such trial that such consent or certificate of the Secretary of State or Governor as is required by this Act has been given, and the fact of the same having been given shall be presumed unless disputed by the defendant at the trial; and the production of a document purporting to be signed by one of Her Majesty's Principal Secretaries of State as respects the United Kingdom, and by the Governor as respects any other part of Her Majesty's dominions, and containing such consent and certificate, shall be sufficient evidence for all the purposes of this Act of the consent and certificate required by this Act.

Proceedings before a justice of the peace or other magistrate previous to the committal of an offender for trial or to the determination of the justice or magistrate that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this Act.

5. Nothing in this Act contained shall be construed to be in derogation of any rightful jurisdiction of Her Majesty, her heirs or successors, under the law of nations, or to affect or prejudice any jurisdiction conferred by Act of Parliament or now by law existing in relation to foreign ships or in relation to persons on board such ships.

6. This Act shall not prejudice or affect the trial in manner heretofore in use of any act of piracy as defined by the law of nations, or affect or prejudice any law relating thereto; and where any act of piracy as defined by the law of nations is also any such offence as is declared by this Act to be within the jurisdiction of the Admiral, such offence may be tried in pursuance of this Act, or in pursuance of any other Act of Parliament, law, or custom relating thereto.

7. In this Act, unless there is something inconsistent in the context, the following expressions shall respectively have the meanings herein-after assigned to them; that is to say,

"The jurisdiction of the Admiral," as used in this Act, includes the jurisdiction of the Admiralty of England and Ireland, or either of such jurisdictions as used in any Act of Parliament; and for the purpose of arresting any person charged with an offence declared by this Act to be within the jurisdiction of the Admiral, the territorial waters adjacent to the United Kingdom, or any other part of Her Majesty's dominions, shall be deemed to be within the jurisdiction of any judge, magistrate, or officer having power within such United Kingdom, or other part of Her Majesty's dominions, to issue warrants for arresting or to arrest persons charged with offences committed within the jurisdiction of such judge, magistrate, or officer:

"United Kingdom" includes the Isle of Man, the Channel Islands, and other adjacent islands:

"The territorial waters of Her Majesty's dominions," in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offence declared by this Act to be within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions:

"Governor," as respects India, means the Governor General or the Governor of any presidency; and where a British possession consists of several constituent colonies, means the Governor General of the whole possession or the Governor of any of the constituent colonies; and as respects any other British possession, means the officer for the time being administering the government of such possession; also any person acting for or in the capacity of Governor shall be included under the term "Governor":

"Offence" as used in this Act means an act, neglect, or default of such a description as would, if committed within the body of a county in England, be punishable on indictment according to the law of England for the time being in force:

"Ship" includes every description of ship, boat, or other floating craft:

"Foreign ship" means any ship which is not a British ship.

# 18. AN ACT FOR REGULATING NAVAL PRIZE OF WAR.

(27 & 28 Vict. cap. 25, June 23, 1864.)

(*Abridged.*)

WHEREAS it is expedient to enact permanently, with Amendments, such Provisions concerning Naval Prize, and Matters connected therewith, as have heretofore been usually passed at the Beginning of a War:

Be it therefore enacted etc.

*Preliminary.*

1. This Act may be cited as The Naval Prize Act, 1864.

2. In this Act—

The Term "the Lords of the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral:

The Term "the High Court of Admiralty" means the High Court of Admiralty of *England:*

The Term "any of Her Majesty's Ships of War" includes any of Her Majesty's Vessels of War, and any hired armed Ship or Vessel in Her Majesty's Service:

The Term "Officers and Crew" includes Flag Officers, Commanders, and other Officers, Engineers, Seamen, Marines, Soldiers, and others on board any of Her Majesty's Ships of War:

The Term "Ship" includes Vessel and Boat, with the Tackle, Furniture, and Apparel of the Ship, Vessel, or Boat:

The Term "Ship Papers" includes all Books, Passes, Sea Briefs, Charter Parties, Bills of Lading, Cockets, Letters, and other Documents and Writings delivered up or found on board a captured Ship:

The Term "Goods" includes all such Things as are by the Course of Admiralty and Law of Nations the Subject of Adjudication as Prize (other than Ships).

I.—PRIZE COURTS.

3. The High Court of Admiralty, and every Court of Admiralty or of Vice-Admiralty, or other Court exercising Admiralty Jurisdiction in Her Majesty's Dominions, for the Time being authorized to take cognizance of and judicially proceed in Matters of Prize, shall be a Prize Court within the Meaning of this Act.

Every such Court, other than the High Court of Admiralty, is comprised in the Term "Vice-Admiralty Prize Court," when hereafter used in this Act.

*High Court of Admiralty.*

4. The High Court of Admiralty shall have Jurisdiction throughout Her Majesty's Dominions as a Prize Court.

The High Court of Admiralty as a Prize Court shall have Power to enforce any Order or Decree of a Vice-Admiralty Prize Court, and any Order or Decree of the Judicial Committee of the Privy Council in a Prize Appeal.

*Appeal; Judicial Committee.*

5. An Appeal shall lie to Her Majesty in Council from any Order or Decree of a Prize Court, as of Right in case of a Final Decree, and in other Cases with the Leave of the Court making the Order or Decree.

Every Appeal shall be made in such Manner and Form and subject to such Regulations (including Regulations as to Fees, Costs, Charges, and Expenses) as may for the Time being be directed by Order in Council, and in

the Absence of any such Order, or so far as any such Order does not extend, then in such Manner and Form and subject to such Regulations as are for the Time being prescribed or in force respecting Maritime Causes of Appeal.

6. The Judicial Committee of the Privy Council shall have Jurisdiction to hear and report on any such Appeal, and may therein exercise all such Powers as for the Time being appertain to them in respect of Appeals from any Court of Admiralty Jurisdiction, and all such Powers as are under this Act vested in the High Court of Admiralty, and all such Powers as were wont to be exercised by the Commissioners of Appeal in Prize Causes.

7. All Processes and Documents required for the Purposes of any such Appeal shall be transmitted to and shall remain in the Custody of the Registrar of Her Majesty in Prize Appeals.

8. In every such Appeal the usual Inhibition shall be extracted from the Registry of Her Majesty in Prize Appeals within Three Months after the Date of the Order or Decree appealed from if the Appeal be from the High Court of Admiralty, and within Six Months after that Date if it be from a Vice-Admiralty Prize Court.

The Judicial Committee may, nevertheless, on sufficient Cause shown, allow the Inhibition to be extracted and the Appeal to be prosecuted after the Expiration of the respective Periods aforesaid.

*Vice-Admiralty Prize Courts.*

9. Every Vice-Admiralty Prize Court shall enforce within its Jurisdiction all Orders and Decrees of the Judicial Committee in Prize Appeals and of the High Court of Admiralty in Prize Causes.

10. Her Majesty in Council may grant to the Judge of any Vice-Admiralty Prize Court a Salary not exceeding Five hundred Pounds a Year, payable out of Money provided by Parliament, subject to such Regulations as seem meet.

A Judge to whom a Salary is so granted shall not be entitled to any further Emolument, arising from Fees or otherwise, in respect of Prize Business transacted in his Court.

An Account of all such Fees shall be kept by the Registrar of the Court, and the Amount thereof shall be carried to and form Part of the Consolidated Fund of the United Kingdom.

11. In accordance, as far as Circumstances admit, with the Principles and Regulations laid down in The Superannuation Act, 1859, Her Majesty in Council may grant to the Judge of any Vice-Admiralty Prize Court an annual or other Allowance, to take effect on the Termination of his Service, and to be payable out of Money provided by Parliament.

12. *Returns from Vice-Admiralty Prize Courts.*

*General.*

13. *General Orders for Prize Courts.*

14. *Prohibition of Officer of Prize Court acting as Proctor, etc.*

15. *Prohibition of Proctors being concerned for adverse Parties in a Cause.*

## II.—Procedure in Prize Causes.

*Proceedings by Captors.*

16. Every Ship taken as Prize, and brought into Port within the Jurisdiction of a Prize Court, shall forthwith, and without Bulk broken, be delivered up to the Marshal of the Court.

If there is no such Marshal, then the Ship shall be in like Manner delivered up to the principal Officer of Customs at the Port.

The Ship shall remain in the Custody of the Marshal, or of such Officer, subject to the Orders of the Court.

17. The Captors shall, with all practicable Speed after the Ship is brought into Port, bring the Ship Papers into the Registry of the Court.

The Officer in Command, or One of the Chief Officers of the capturing Ship, or some other Person who was present at the Capture, and saw the Ship Papers delivered up or found on board, shall make Oath that they are brought in as they were taken, without Fraud, Addition, Subduction, or Alteration, or else shall account on Oath to the Satisfaction of the Court for the Absence or altered Condition of the Ship Papers or any of them.

Where no Ship Papers are delivered up or found on board the captured

Ship, the Officer in Command, or One of the Chief Officers of the capturing Ship, or some other Person who was present at the Capture, shall make Oath to that Effect.

18. As soon as the Affidavit as to Ship Papers is filed, a Monition shall issue, returnable within Twenty Days from the Service thereof, citing all Persons in general to show Cause why the captured Ship should not be condemned.

19. The Captors shall, with all practicable Speed after the captured Ship is brought into Port, bring Three or Four of the principal Persons belonging to the captured Ship before the Judge of the Court or some Person authorized in this Behalf, by whom they shall be examined on Oath on the Standing Interrogatories.

The Preparatory Examinations on the Standing Interrogatories shall, if possible, be concluded within Five Days from the Commencement thereof.

20. After the Return of the Monition, the Court shall, on Production of the Preparatory Examinations and Ship Papers, proceed with all convenient Speed either to condemn or to release the captured Ship.

21. Where, on Production of the Preparatory Examinations and Ship Papers, it appears to the Court doubtful whether the captured Ship is good Prize or not, the Court may direct further Proof to be adduced, either by Affidavit or by Examination of Witnesses, with or without Pleadings, or by Production of further Documents; and on such further Proof being adduced the Court shall with all convenient Speed proceed to Adjudication.

22. The foregoing Provisions, as far as they relate to the Custody of the Ship, and to Examination on the Standing Interrogatories, shall not apply to Ships of War taken as Prize.

*Claim.*

23. At any Time before Final Decree made in the Cause, any Person claiming an Interest in the Ship may enter in the Registry of the Court a Claim, verified on Oath.

Within Five Days after entering the Claim, the Claimant shall give Security for Costs in the Sum of Sixty Pounds; but the Court shall have Power to enlarge the Time for giving Security, or to direct Security to be given in a larger Sum, if the Circumstances appear to require it.

*Appraisement.*

24. The Court may, if it thinks fit, at any Time direct that the captured Ship be appraised.

Every Appraisement shall be made by competent Persons sworn to make the same according to the best of their Skill and Knowledge.

*Delivery on Bail.*

25. After Appraisement, the Court may, if it thinks fit, direct that the captured Ship be delivered up to the Claimant, on his giving Security to the Satisfaction of the Court to pay to the Captors the appraised Value thereof in case of Condemnation.

*Sale.*

26. The Court may at any Time, if it thinks fit, on account of the Condition of the captured Ship, or on the Application of a Claimant, order that the captured Ship be appraised as aforesaid (if not already appraised), and be sold.

27. On or after Condemnation the Court may, if it thinks fit, order that the Ship be appraised as aforesaid (if not already appraised), and be sold.

28. Every Sale shall be made by or under the Superintendence of the Marshal of the Court or of the Officer having the Custody of the captured Ship.

29. *Payment of Proceeds to Paymaster General or Official Accountant.*

*Small armed Ships.*

30. The Captors may include in One Adjudication any Number, not exceeding Six, of armed Ships not exceeding One hundred Tons each, taken within Three Months next before Institution of Proceedings.

*Goods.*

31. The foregoing Provisions relating to Ships shall extend and apply, *mutatis mutandis*, to Goods taken as Prize on board Ship; and the Court may direct such Goods to be unladen, inventoried, and warehoused.

*Monition to Captors to proceed.*

32. If the Captors fail to institute or to prosecute with Effect Proceedings for Adjudication, a Monition shall, on the Application of a Claimant, issue against the Captors, returnable within Six Days from the Service thereof, citing them to appear and proceed to Adjudication; and on the Return thereof the Court shall either forthwith proceed to Adjudication or direct further Proof to be adduced as aforesaid, and then proceed to Adjudication.

*Claim on Appeal.*

33. Where any Person, not an original Party in the Cause, intervenes on Appeal, he shall enter a Claim, verified on Oath, and shall give Security for Costs.

III.—Special Cases of Capture.

*Land Expeditions.*

34. Where, in an Expedition of any of Her Majesty's Naval or Naval and Military Forces against a Fortress or Possession on Land, Goods belonging to the State of the Enemy or to a Public Trading Company of the Enemy exercising Powers of Government are taken in the Fortress or Possession, or a Ship is taken in Waters defended by or belonging to the Fortress or Possession, a Prize Court shall have Jurisdiction as to the Goods or Ship so taken, and any Goods taken on board the Ship, as in case of Prize.

*Conjunct Capture with Ally.*

35. Where any Ship or Goods is or are taken by any of Her Majesty's Naval or Naval and Military Forces while acting in conjunction with any Forces of any of Her Majesty's Allies, a Prize Court shall have Jurisdiction as to the same as in case of Prize, and shall have Power, after Condemnation, to apportion the due Share of the Proceeds to Her Majesty's Ally, the proportionate Amount and the Disposition of which Share shall be such as may from Time to Time be agreed between Her Majesty and Her Majesty's Ally.

*Joint Capture.*

36. Before Condemnation, a Petition on behalf of asserted joint Captors shall not (except by special Leave of the Court) be admitted, unless and until they give Security to the Satisfaction of the Court to contribute to the actual Captors a just Proportion of any Costs, Charges, or Expenses or Damages that may be incurred by or awarded against the actual Captors on account of the Capture and Detention of the Prize.

After Condemnation, such a Petition shall not (except by special Leave of the Court) be admitted unless and until the asserted joint Captors pay to the actual Captors a just Proportion of the Costs, Charges, and Expenses incurred by the actual Captors in the Case, and give such Security as aforesaid, and show sufficient Cause to the Court why their Petition was not presented before Condemnation.

Provided, that nothing in the present Section shall extend to the asserted Interest of a Flag Officer claiming to share by virtue of his Flag.

*Offences against Law of Prize.*

37. A Prize Court, on Proof of any Offence against the Law of Nations, or against this Act, or any Act relating to Naval Discipline, or against any Order in Council or Royal Proclamation, or of any Breach of Her Majesty's Instructions relating to Prize, or of any Act of Disobedience to the Orders of the Lords of the Admiralty, or to the Command of a Superior Officer, committed by the Captors in relation to any Ship or Goods taken as Prize, or in relation to any Person on board any such Ship, may, on Condemnation,

reserve the Prize to Her Majesty's Disposal, notwithstanding any Grant that may have been made by Her Majesty in favour of Captors.

*Pre-emption.*

38. Where a Ship of a Foreign Nation passing the Seas laden with Naval or Victualling Stores intended to be carried to a Port of any Enemy of Her Majesty is taken and brought into a Port of the United Kingdom, and the Purchase for the Service of Her Majesty of the Stores on board the Ship appears to the Lords of the Admiralty expedient without the Condemnation thereof in a Prize Court, in that Case the Lords of the Admiralty may purchase, on the Account or for the Service of Her Majesty, all or any of the Stores on board the Ship; and the Commissioners of Customs may permit the Stores purchased to be entered and landed within any Port.

*Capture by Ship other than a Ship of War.*

39. Any Ship or Goods taken as Prize by any of the Officers and Crew of a Ship other than a Ship of War of Her Majesty shall, on Condemnation, belong to Her Majesty in Her Office of Admiralty.

## IV.—Prize Salvage.

40. Where any Ship or Goods belonging to any of Her Majesty's Subjects, after being taken as Prize by the enemy, is or are retaken from the Enemy by any of Her Majesty's Ships of War, the same shall be restored by Decree of a Prize Court to the Owner, on his paying as Prize Salvage One Eighth Part of the Value of the Prize to be decreed and ascertained by the Court, or such Sum not exceeding One Eighth Part of the estimated Value of the Prize as may be agreed on between the Owner and the Re-captors, and approved by Order of the Court; Provided, that where the Re-capture is made under Circumstances of special Difficulty or Danger, the Prize Court may, if it thinks fit, award to the Re-captors as Prize Salvage a larger Part than One Eighth Part, but not exceeding in any Case One Fourth Part, of the Value of the Prize.

Provided also, that where a Ship after being so taken is set forth or used by any of Her Majesty's Enemies as a Ship of War, this Provision for Restitution shall not apply, and the Ship shall be adjudicated on as in other Cases of Prize.

41. Where a Ship belonging to any of Her Majesty's Subjects, after being taken as Prize by the Enemy, is retaken from the Enemy by any of Her Majesty's Ships of War, she may, with the Consent of the Re-captors, prosecute her Voyage, and it shall not be necessary for the Re-captors to proceed to Adjudication till her Return to a Port of the United Kingdom.

The Master or Owner, or his Agent, may, with the Consent of the Re-captors, unload and dispose of the Goods on board the Ship before Adjudication.

In case the Ship does not, within Six Months, return to a Port of the United Kingdom, the Re-captors may nevertheless institute Proceedings against the Ship or Goods in the High Court of Admiralty, and the Court may thereupon award Prize Salvage as aforesaid to the Re-captors, and may enforce Payment thereof, either by Warrant of Arrest against the Ship or Goods, or by Monition and Attachment against the Owner.

## V.—Prize Bounty.

42. If, in relation to any War, Her Majesty is pleased to declare, by Proclamation or Order in Council, Her Intention to grant Prize Bounty to the Officers and Crews of Her Ships of War, then such of the Officers and Crew of any of Her Majesty's Ships of War as are actually present at the taking or destroying of any armed Ship of any of Her Majesty's Enemies shall be entitled to have distributed among them as Prize Bounty a Sum calculated at the Rate of Five Pounds for each Person on board the Enemy's Ship at the Beginning of the Engagement.

43. The Number of the Persons so on board the Enemy's Ship shall

be proved in a Prize Court, either by the Examinations on Oath of the Survivors of them, or of any Three or more of the Survivors, or if there is no Survivor by the Papers of the Enemy's Ship, or by the Examinations on Oath of Three or more of the Officers and Crew of Her Majesty's Ship, or by such other Evidence as may seem to the Court sufficient in the Circumstances.

The Court shall make a Decree declaring the Title of the Officers and Crew of Her Majesty's Ship to the Prize Bounty, and stating the Amount thereof.

The Decree shall be subject to Appeal as other Decrees of the Court.

44. On Production of an official Copy of the Decree the Commissioners of Her Majesty's Treasury shall, out of Money provided by Parliament, pay the Amount of Prize Bounty decreed, in such Manner as any Order in Council may from Time to Time direct.

## VI.—Miscellaneous Provisions.

### *Ransom.*

45. Her Majesty in Council may from Time to Time, in relation to any War, make such Orders as may seem expedient, according to Circumstances, for prohibiting or allowing, wholly or in certain Cases, or subject to any Conditions or Regulations or otherwise, as may from Time to Time seem meet, the ransoming or the entering into any Contract or Agreement for the ransoming of any Ship or Goods belonging to any of Her Majesty's Subjects, and taken as Prize by any of Her Majesty's Enemies.

Any Contract or Agreement entered into, and any Bill, Bond, or other Security given for Ransom of any Ship or Goods, shall be under the exclusive Jurisdiction of the High Court of Admiralty as a Prize Court (subject to Appeal to the Judicial Committee of the Privy Council), and if entered into or given in contravention of any such Order in Council shall be deemed to have been entered into or given for an illegal Consideration.

If any Person ransoms or enters into any Contract or Agreement for ransoming any Ship or Goods, in contravention of any such Order in Council, he shall for every such Offence be liable to be proceeded against in the High Court of Admiralty at the Suit of Her Majesty in Her Office of Admiralty, and on Conviction to be fined, in the Discretion of the Court, any Sum not exceeding Five hundred Pounds.

### *Convoy.*

46. If the Master or other Person having the Command of any Ship of any of Her Majesty's Subjects, under the Convoy of any of Her Majesty's Ships of War, wilfully disobeys any lawful Signal, Instruction, or Command of the Commander of the Convoy, or without Leave deserts the Convoy, he shall be liable to be proceeded against in the High Court of Admiralty at the Suit of Her Majesty in Her Office of Admiralty, and upon Conviction to be fined, in the Discretion of the Court, any Sum not exceeding Five hundred Pounds, and to suffer Imprisonment for such Time, not exceeding One Year, as the Court may adjudge.

### *Customs Duties and Regulations.*

47. All Ships and Goods taken as Prize and brought into a Port of the United Kingdom shall be liable to and be charged with the same Rates and Charges and Duties of Customs as under any Act relating to the Customs may be chargeable on other Ships and Goods of the like Description; and

All Goods brought in as Prize which would on the voluntary Importation thereof be liable to Forfeiture or subject to any Restriction under the Laws relating to the Customs, shall be deemed to be so liable and subject, unless the Commissioners of Customs see fit to authorise the Sale or Delivery thereof for Home Use or Exportation, unconditionally or subject to such Conditions and Regulations as they may direct.

48. Where any Ship or Goods taken as Prize is or are brought into a Port of the United Kingdom, the Master or other Person in charge or command of the Ship which has been taken or in which the Goods are

brought shall, on Arrival at such Port, bring to at the proper Place of Discharge, and shall, when required by any Officer of Customs, deliver an Account in Writing under his Hand concerning such Ship and Goods, giving such Particulars relating thereto as may be in his Power, and shall truly answer all Questions concerning such Ship or Goods asked by any such Officer, and in default shall forfeit a Sum not exceeding One hundred Pounds, such Forfeiture to be enforced as Forfeitures for Offences against the Laws relating to the Customs are enforced, and every such Ship shall be liable to such Searches as other Ships are liable to, and the Officers of the Customs may freely go on board such Ship and bring to the Queen's Warehouse any Goods on board the same, subject, nevertheless, to such Regulations in respect of Ships of War belonging to Her Majesty as shall from Time to Time be issued by the Commissioners of Her Majesty's Treasury.

49. Goods taken as Prize may be sold either for Home Consumption or for Exportation; and if in the former Case the Proceeds thereof, after Payment of Duties of Customs, are insufficient to satisfy the just and reasonable Claims thereon, the Commissioners of Her Majesty's Treasury may remit the whole or such Part of the said Duties as they see fit.

*Perjury.*

50. If any Person wilfully and corruptly swears, declares, or affirms falsely in any Prize Cause or Appeal, or in any Proceeding under this Act, or in respect of any Matter required by this Act to be verified on Oath, or suborns any other Person to do so, he shall be deemed guilty of Perjury, or of Subornation of Perjury (as the Case may be), and shall be liable to be punished accordingly.

*Limitation of Actions, etc.*

51. Any Action or Proceeding shall not lie in any Part of Her Majesty's Dominions against any Person acting under the Authority or in the Execution or intended Execution or in pursuance of this Act for any alleged Irregularity or Trespass, or other Act or Thing done or omitted by him under this Act, unless Notice in Writing (specifying the Cause of the Action or Proceeding) is given by the intending Plaintiff or Prosecutor to the intended Defendant One Month at least before the Commencement of the Action or Proceeding, nor unless the Action or Proceeding is commenced within Six Months next after the Act or Thing complained of is done or omitted, or, in case of a Continuation of Damage, within Six Months next after the doing of such Damage has ceased.

In any such Action the Defendant may plead generally that the Act or Thing complained of was done or omitted by him when acting under the Authority or in the Execution or intended Execution or in pursuance of this Act, and may give all special Matter in Evidence; and the Plaintiff shall not succeed if Tender of sufficient Amends is made by the Defendant before the Commencement of the Action; and in case no Tender has been made, the Defendant may, by Leave of the Court in which the Action is brought, at any Time pay into Court such Sum of Money as he thinks fit, whereupon such Proceeding and Order shall be had and made in and by the Court as may be had and made on the Payment of Money into Court in an ordinary Action; and if the Plaintiff does not succeed in the Action, the Defendant shall receive such full and reasonable Indemnity as to all Costs, Charges, and Expenses incurred in and about the Action as may be taxed and allowed by the proper Officer, subject to Review; and though a Verdict is given for the Plaintiff in the Action he shall not have Costs against the Defendant, unless the Judge before whom the Trial is had certifies his Approval of the Action.

Any such Action or Proceeding against any Person in Her Majesty's Naval Service, or in the Employment of the Lords of the Admiralty, shall not be brought or instituted elsewhere than in the United Kingdom.

*Petitions of Right.*

52. A Petition of Right, under The Petitions of Right Act, 1860, may, if the Suppliant thinks fit, be intituled in the High Court of Admiralty, in case the Subject Matter of the Petition or any material Part thereof arises

out of the Exercise of any Belligerent Right on behalf of the Crown, or would be cognizable in a Prize Court within Her Majesty's Dominions if the same were a Matter in dispute between private Persons.

Any Petition of Right under the last-mentioned Act, whether intituled in the High Court of Admiralty or not, may be prosecuted in that Court, if the Lord Chancellor thinks fit so to direct.

The Provisions of this Act relative to Appeal, and to the framing and Approval of General Orders for regulating the Procedure and Practice of the High Court of Admiralty, shall extend to the Case of any such Petition of Right intituled or directed to be prosecuted in that Court; and, subject thereto, all the Provisions of The Petitions of Right Act, 1860, shall apply, *mutatis mutandis*, in the Case of any such Petition of Right; and for the Purposes of the present Section the Terms "Court" and "Judge" in that Act shall respectively be understood to include and to mean the High Court of Admiralty and the Judge thereof, and other Terms shall have the respective Meanings given to them in that Act.

*Orders in Council.*

53. *Power to make Orders in Council.*
54. *Order in Council to be gazetted, etc.*

*Savings.*

55. Nothing in this Act shall—

(1) give to the Officers and Crew of any of Her Majesty's Ships of War any Right or Claim in or to any Ship or Goods taken as Prize or the Proceeds thereof, it being the Intent of this Act that such Officers and Crews shall continue to take only such Interest (if any) in the Proceeds of Prizes as may be from Time to Time granted to them by the Crown; or

(2) affect the Operation of any existing Treaty or Convention with any Foreign Power; or

(3) take away or abridge the Power of the Crown to enter into any Treaty or Convention with any Foreign Power containing any Stipulation that may seem meet concerning any Matter to which this Act relates; or

(4) take away, abridge, or control, further or otherwise than as expressly provided by this Act, any Right, Power, or Prerogative of Her Majesty the Queen in right of Her Crown, or in right of Her Office of Admiralty, or any Right or Power of the Lord High Admiral of the United Kingdom, or of the Commissioners for executing the Office of Lord High Admiral; or

(5) take away, abridge, or control, further or otherwise than as expressly provided by this Act, the Jurisdiction or Authority of a Prize Court to take cognizance of and judicially proceed upon any Capture, Seizure, Prize, or Reprisal of any Ship or Goods, and to hear and determine the same, and, according to the Course of Admiralty and the Law of Nations, to adjudge and condemn any Ship or Goods, or any other Jurisdiction or Authority of or exerciseable by a Prize Court.

*Commencement.*

56. *Commencement of Act.*

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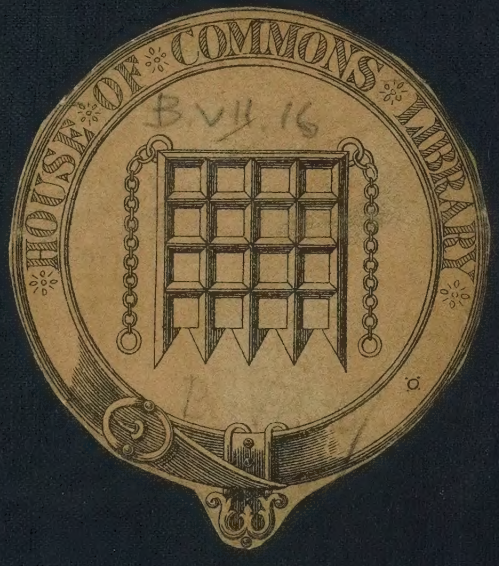
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